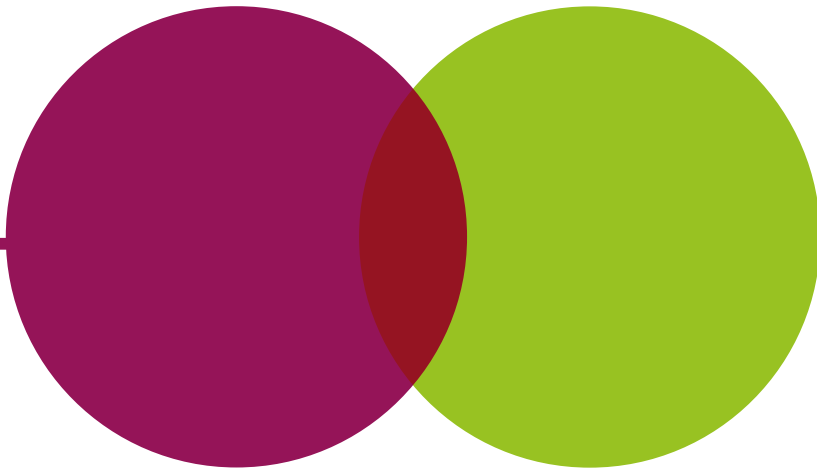




National Audit Office



INSIGHT

Lessons learned: competition in public procurement

Cabinet Office

SESSION 2022-23
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Cabinet Office

Report by the Comptroller and Auditor General

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Gareth Davies
Comptroller and Auditor General
National Audit Office

12 July 2023

Lessons learned reports

Our lessons learned reports bring together what we know on important recurring issues to make it easier for others to understand and apply the lessons from our work.

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This report can be found on the National Audit Office website at www.nao.org.uk


If you need a version of this report in an alternative format for accessibility reasons, or any of the figures in a different format, contact the NAO at enquiries@nao.org.uk


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Key insights on public sector procurement best practice

To maximise the benefits of effective competition, decision makers will need to have consideration for multiple aspects of procurement throughout a contract's lifecycle, especially prior to signing a contract when the requirements and approach to engagement are still being determined.

When determining requirements, authorities should:

Use knowledge of the market to inform what they seek to achieve, to avoid unnecessarily excluding potential suppliers through overambitious approaches.

Define requirements sufficiently to be clear to suppliers, while leaving room for flexibility and innovation if appropriate to the contract.

Identify and set out the benefits and costs early enough to ensure that both buyers and suppliers make decisions based on the appropriate information.

When sourcing, authorities should:

Identify the best route to securing the requirement, whether in-house, through the market or a combination of the two.

Consider the delivery, integration and stakeholder management risks when using multiple contracts to deliver a product, process, or service.

Consider how the risk of supplier failure will be managed and acknowledge their appetite for risk when choosing an approach.

When monitoring and engaging with suppliers, authorities should:

Collect detailed information about the market whenever possible, including from existing suppliers.

Understand where collective buying arrangements can best be used to strengthen purchasing power.

Engage with suppliers in the market to understand their capabilities and circumstances.

During the contract award process, authorities should:

Make sure they select the appropriate contract model and pricing mechanisms.

Ensure there is enough time to follow the process correctly.

Provide detailed feedback to both winners and losers.

When managing a contract or market, authorities should:

Ensure that there is an appropriate mobilisation period to allow relationships and the contract processes to bed in.

Consider other enablers of the contract, such as sub-contractors in the supply chain or commitments the buyer must fulfil for suppliers to succeed.

Ensure they collect appropriate data to assess the outcomes achieved.

Before the end of the contract, authorities should:

Use available mechanisms to collect data on supplier health and the market, to use to inform future procurements.

Ensure they have visibility of costs and other information which is needed to support the transition process.

Maintain contingency plans for supplier failure and consider the options for making changes where this is likely to be beneficial.

Summary

Introduction

1 The government purchases a wide variety of goods and services through competitive procurement processes, from facilities management services to specialist services such as probation, to new IT systems or large-scale infrastructure projects. In competitive processes, buyers can select from offers made by suppliers. Government uses other procurement approaches in specific circumstances, but it is a broadly agreed principle in the UK and internationally that competition can help support efficiency, innovation and quality in public services, by allowing buyers to select the bid that can supply the optimal balance of benefits and cost. When competition is lacking or ineffective, other safeguards are required, or value for money can be reduced through higher prices, inefficiencies and poorer outcomes.

2 Government departments and other public bodies are required to use open competition in their procurements, under the Public Contracts Regulations 2015 and related statutory instruments.¹ These regulations also set out the underlying principles of equal treatment and seek to ensure that public bodies follow fair and reasonable procurement timetables and procedures. They highlight the consequences, such as artificial narrowing of competition, of failing to follow these principles, but do not actively define effective competition. As at May 2023, Parliament is considering the Procurement Bill which will replace the current regulations.² The Procurement Bill likewise reflects principles of proportionality, transparency and ensuring that suppliers are not put at an unfair advantage or disadvantage. Competition acts as a means of supporting probity, transparency and confidence in public spending, by providing greater visibility of the process to stakeholders and the public. Where the principles of competition are applied, the way that the process is designed, for example how the requirements are specified and how the bid process is run, can affect how effective any competition is at meeting the buyer's needs and maximising benefits in price and outcomes.

¹ The Public Contracts Regulations 2015, www.legislation.gov.uk/uksi/2015/102/contents/made

² The Procurement Bill, as amended in Public Bill Committee, <https://bills.parliament.uk/bills/3159>

3 Various mechanisms affect how competition is used in government.

Departments and other public bodies are responsible for carrying out their own procurement exercises and have their own approval processes in addition to some central processes operated by HM Treasury and Cabinet Office. As well as operating controls over procurement spending, the Cabinet Office and its central commercial teams within the Government Commercial Function offer further support through publishing guidance, monitoring suppliers and offering advice on some individual transactions.

4 Government has not defined effective competition but recognises that improvements in procurement could bring significant savings. Government spent £259 billion on the procurement of goods and services in 2021-22. It does not measure how much of public procurement as a whole is competitively tendered, but of the total contract value of more than £100 billion awarded by major departments during 2021-22, around two thirds was subject to competition in some form. In the impact assessment for its current Procurement Bill, government has produced illustrative scenarios that suggest it could achieve savings of £4 billion to £7.7 billion per year through increased competition.

5 This report examines whether government has mechanisms in place to understand and encourage competition in public procurement, and how government departments can make their use of competition more effective. The report draws on our insights from examining procurement processes of differing values and types, from the Superfast Broadband Programme to asylum accommodation and support services. It covers the large proportion of government procurement where there is an expectation that there should be a competitive market. This does not include the relatively narrow and specific circumstances where departments are not required to use formal competition, such as for some defence requirements or procurement in an emergency.

6 This report first introduces the scale and variety of competitions run by central government departments and agencies and the role of the centre of government in supporting departments (Part One). It then provides two complementary perspectives and related insights:

- for government as a whole, we examine how government is using data to support its understanding and oversight of competition (Part Two); and
- for government practitioners and senior decision makers, we identify lessons learned and relevant examples from our experience auditing government competitions, considering the key enablers for more effective competition throughout the commercial lifecycle (Part Three).

7 The evidence base for this report includes a review of our published reports, combined with workshops and interviews with a range of government procurement professionals, suppliers to government and other stakeholder individuals and organisations. We have also analysed government data on contracts and competition, and used interviews and document review to understand the work of the Cabinet Office in relation to competition. Our published reports include consideration of competitive procurement across a range of government departments and activities as part of our examinations of government programmes over many years.

8 In some places we include specific examples from our published work. These are illustrative examples and are not indicative of the overall performance of the department concerned. Nor do all programmes featured, or in government, exhibit all of the issues we identify.

Key findings

Ensuring competition is effective

9 The concept of competition is well embedded in central government and departments. Increasing competition for public contracts can improve value for money by allowing suppliers to demonstrate how they can improve quality, reduce costs and increase the scope for innovation. Competition also supports confidence in the probity and transparency of public spending by introducing benchmarks and alternatives, relative to the direct award of contracts. Public procurement regulations require government departments to use competition and the Government Commercial Function has established competition as the default approach to procurement. The Cabinet Office has issued guidance to departments that emphasises the importance of competition throughout the procurement process (paragraphs 1.4, 1.6 and 1.10).

10 Departments need to understand how to establish the right conditions for effective competition, varying approaches as needed across sectors and procurements. For each individual procurement, the decisions of departments and procurement staff affect aspects of the process. These could include how many suppliers bid, how well suppliers understand the requirement, and how different priorities are emphasised in assessment. These factors can in turn affect the benefits consequently achieved in price, quality and innovation. Departments therefore need to invest time and resources developing their requirements and identifying the best route to achieve them. This includes: developing markets; encouraging more suppliers to bid to increase choice; understanding their own capacity limits; and understanding the factors other than the number of bidders that influence the effectiveness of competition (paragraphs 3.2 to 3.4 and Figures 6 and 7).

11 Departments have opportunities throughout the lifecycle of the contract to improve the effectiveness of competition. Making the most of the opportunities available through competition starts from departments designing realistic requirements for goods or services and using these to inform their sourcing approach. Our past reports, and our more recent fieldwork with stakeholders, have shown government has often not done this. We have seen cases where poorly-designed requirements and sourcing have led to few bids, or to buyers appointing suppliers that proved to be unsuitable. Departments need to engage the market sufficiently, by consulting potential suppliers and providing information to the market in a way that does not favour particular suppliers. Cabinet Office guidance encourages this, but stakeholders told us that departments often take an overly cautious approach to engagement and are not always clear on what they can do. We have reported on cases where the benefits of competition have been reduced because this opportunity to prepare has been missed. Once the contract has been awarded, departments should maintain competitive pressure by using information on the contract and market, such as information on suppliers' costs and approaches. This will also help them to be ready for transition at the end of the contract (paragraphs 3.5 to 3.29 and Figure 6).

12 Departments need to consider how their actions during individual procurements can affect the long-term participation of suppliers and consequently the competitiveness of the market. Suppliers told us that high bid costs, lack of confidence in evaluation and a lack of feedback can deter suppliers from bidding, potentially causing a contraction in the public procurement market. Departments improving engagement with suppliers, including those which do not win contracts, can increase levels of competition in future procurements. Doing so would provide more scope for smaller firms to stay involved, while reducing reliance on a few large suppliers (paragraphs 3.3 and 3.21).

Understanding how competition is working

13 Government is making increased use of framework agreements to help departments get the most competitive benefit at least administrative cost, but frameworks can reduce competition when not used effectively.

Framework agreements generally involve an initial competition for suppliers to gain access to a framework, followed by a shortened call-off process for contracts to be awarded to one of those framework suppliers. This means that once a framework agreement has been put in place departments can more quickly set up contracts with suppliers, without going through a full procurement exercise each time. Government procured 72% of its large contracts through frameworks in 2021-22 compared to 43% in 2018-19. Frameworks are designed for procuring common goods and services to allow departments to access economies of scale, but they are not always the way to achieve the best competition. Guidance produced by government states that where the goods or services are not common, a full procurement process should be undertaken. Government monitors savings from individual frameworks by comparing their prices to estimations of prices charged by suppliers outside the framework. It does not assess whether, or to what extent, the number of suppliers on a framework affects competition (paragraphs 2.8 to 2.10 and Figures 3 and 5).

14 Departments are not always following central guidance to achieve the benefits of competition. While the concept of competition and how to fulfil its basic principles is broadly understood, departments are less consistent in implementing competition effectively. As well as issuing guidance to departments, the Cabinet Office applies spending controls to procurements for larger contracts, and sometimes makes recommendations on competition. Despite these arrangements there are many cases of departments choosing non-compliant extension of contracts rather than the competitive procurement process which should be the default. There is also significant variation in how departments adhere to Cabinet Office processes for procurement. For example, while departments now consistently publish their procurement pipelines of forthcoming contracts, for each of the quarters during 2022 only five of 16 departments published a complete set of the required data on these contracts (paragraphs 1.8, 1.11 to 1.13 and 2.13 and Figure 2).

15 The poor quality of much of government's published data on contracts reduces transparency and makes it harder to identify and promote best practice.

Public bodies are required to publish large amounts of information on prospective and awarded contracts. We found that basic information on which procurement route was used was missing for 6% of contracts recorded on Contracts Finder, one of two public contract databases, from 2018 to 2022. Information on other aspects of contracts is collected inconsistently between the two databases, and most departments do not consistently publish all contracts within the required time. The Cabinet Office is working on changes to the process and its standards, including consolidating to only using one database. It has significant scope to improve the quality of data and possible analysis, by better defining what information is useful and monitoring how it is collected. For example, more complete information would allow it to analyse how many contracts different departments award to small and medium-sized enterprises or strategic suppliers. The Cabinet Office has some knowledge-sharing approaches in place across the government commercial community, but does not join up published contract information with insights from its teams that provide support to departments and look at markets and suppliers (paragraphs 1.14, 2.2, 2.4, 2.12, 2.16 and 2.17).

16 The Cabinet Office has not used available contract information to understand how competition is working across government. As well as published contract databases, the Cabinet Office's central commercial teams also collect some aggregate contract information from departments' own data systems. They use this data for some analysis of overall trends, but do not use the more detailed contract information to conduct any analysis of competition or markets. We found that, of 235 large contracts recorded on the public contracts database Find a Tender between January 2021 and January 2023, 20% of contracts using open competition received only one bid. The Cabinet Office has not assessed the expected level of single bidders within government's major markets or analysed trends in numbers of bidders (paragraphs 2.11, 2.12 and 2.17).

17 Transparency and the use of data will become even more important under planned increases to the flexibility of procurement choices. The Procurement Bill currently being considered in Parliament has been developed with the aim of reducing administrative costs to businesses and the public sector, while permitting flexibility in how buyers structure competitions and use negotiation. The flexibility which the bill allows increases the importance of collecting good quality data to ensure that departments are using this flexibility properly and identifying best practices (paragraphs 1.15 and 1.16).

Concluding remarks

18 Competition is an underlying principle of public procurement, and widely acknowledged to be a key enabler of value for money. It helps the public sector to secure the goods and services it requires at the right price and quality, and is the best way of demonstrating probity in the award of public contracts. Achieving the benefits of competition requires attention throughout the commercial lifecycle. Our review of competition in public procurement has found that government cannot show how well competition is working, and that the structures to encourage and support the use of competition are not all working as intended. Departments are unclear how to engage with the market before they let a contract, and do not consistently follow central guidance. For example, they routinely extend contracts rather than retendering them. The Cabinet Office provides guidance but does not take advantage of the data it collects to understand more about competition and gain further benefits.

19 Parliament is currently considering the Procurement Bill, which will create more flexibility for departments in how they select suppliers, if it is implemented as drafted. In preparation for this, government needs to do more at the centre to understand where competition is working well and to support departments to address problems where it is not. If government tackles some of the longstanding challenges in using competition effectively it will increase its chances of securing the benefits of its planned new regime.

Recommendations

20 Improving government's use of competition requires the centre of government to understand how competition is working in practice, using this understanding to advise and support departments. We have identified actions which should be taken by those working in policy and at the centre of government. The Cabinet Office and its central commercial teams should:

- a** Building on work it has begun to update its contract database systems and standards, clearly define the information departments are required to publish, including how it should be structured.
- b** Through its procurement reform processes, act to improve the quality of information departments submit on contracts, as well as continuing to improve compliance with transparency requirements.
- c** Set out how it currently uses the information and explore how it can use the range of data collected on individual contracts to analyse competitive trends in markets and use this to support its work.
- d** Work with departments to understand the barriers to early market engagement and take steps to address them.

- e** Expand its guidance on frameworks, alongside working to ensure that where frameworks are used it is for compatible requirements and uses competitive pressure.
 - f** Consider how to make improvements in the supporting elements of the commercial lifecycle as set out in Figure 6 (capability, commercial strategy, governance and accountability, and transparency and data) to support improvements in the effectiveness of competition.
- 21** Our detailed recommendations for departments' commercial teams and the Government Commercial Function, to maximise the benefits of effective competition when they run procurements, are set out in Part Three.