Stage 4

Procure a solution

Confirm a procurement approach and select suppliers that offer best overall value for money (including risk and reward trade-offs).

Key better practice messages

- Become an informed buyer
- Consider a range of procurement options
- Clearly describe what needs to be procured
- Prefer proven technological solutions
- Be aware of the risks of a fixed-price contract
- Use appropriately skilled people to oversee procurement
- Ensure a transparent and fair procurement process

Overview

Understanding what the market can offer is nearly as important as understanding what you want from the market.

When a procurement process is completed effectively, the goods and services procured have a positive impact on the delivery of government programs, services and capital projects through quality resources, delivered at the right price, when needed.

When procurement is completed ineffectively, agencies are exposed to multiple risks:

- the process may be perceived as unfair or not transparent, leading to potential project delays due to protests from prospective suppliers, and a loss of confidence in government
- there may be inadequate competition, leading to reduced value for money for the government and the community
- providers of goods and services can face unnecessary costs from poorly managed processes
- the process, and the subsequent management of the purchase, can fail so completely that the goods and services are not provided at all.

planning strategy solutions

Become an informed buyer

Issues we have observed

Investors should become 'informed buyers' and educate themselves about what is actually available in the market to determine whether the market is equipped to meet the required specifications.

In particular investors need to understand:

- the likelihood of the market being able to achieve the desired end result
- the willingness of the market to modify an existing product to meet a specialised service need.

Illustration

During the project's tender evaluation phase, the agency identified a number of risks associated with the contractor's proposed solution, including that the:

- proposed software was untried with the contractor's existing clients
- contractor had not previously implemented the proposed solution
- contractor had not developed the proposed software
- contractor had not previously dealt with the developers of the software code
- extent of redevelopment exceeded expectations, leading to a higher risk of timelines not being met.

Despite these concerns about the availability of a solution in the market, or of a vendor capable of delivering the solution, the agency procured the proposed solution.

Many of the risks identified in the tender evaluation eventuated, causing significant delays.

The contract was subsequently terminated and the agency incurred further delays in looking for a new vendor.

Practical steps to take

Test market understanding and responsiveness

Engage with potential suppliers as early as possible to test whether the market understands the desired outcomes from the investment and agrees that these are achievable.

Undertake a market evaluation to test market responsiveness to the requirements and the likelihood that the project will attract sufficient competitive interest.

Refer to:

- Victorian Auditor-General's Office, Public Sector Procurement: Turning Principles into Practice. This document can be obtained from http://download.audit.vic.gov.au/files/Procurement_BPG.pdf
- Project tendering guideline developed by DTF. The document can be obtained from: http://www.lifecycleguidance.dtf.vic.gov.au.

Consider a range of procurement options

? Issues we have observed

ICT procurement is still mainly done through the use of traditional 'sealed bid' tendering approaches, rather than through more interactive and flexible approaches, which are designed to enhance value for money and risk/reward outcomes.

Relationship procurement approaches, such as public private partnerships (PPPs) and alliancing are emerging as innovative procurement options that should be considered as a viable choice for complex procurements, including some ICT investments.

Although these and other more innovative methods can provide a more 'commercial' approach to public sector procurement, they require greater vigilance in respect of tender planning and governance, and increased attention to probity arrangements, so that the integrity of the procurement is maintained and optimal sharing of risk is achieved.

Illustration

Only a small number of suppliers exist for a desired system worldwide and two major equipment suppliers dominate the Australian market.

Most of the systems acquired around the world involve long-term contracts for the supply of a proprietary system. Such arrangements have created technical barriers to purchasing authorities, with respect to obtaining the solution and changing equipment or suppliers during the contract period if the systems and equipment fail to operate as required.

The agency's procurement approach was designed to overcome these problems by:

- breaking the system into a number of separate components
- establishing a system where component parts were interchangeable (through the use of transparent architecture).

Rather than providing detailed specification requirements, the agency set out desired outputs and outcomes and gave the tenderers considerable flexibility in how to meet the desired outputs and outcomes.

☑ Practical steps to take

Consider alternative procurement options

Consider using alternative procurement options, such as alliances or PPPs to better manage investment risks. More innovative procurement options can provide:

- flexibility with respect to the number of tendering stages
- flexibility with respect to the timing for closing of bids and contractual close, including retaining the option to accept further 'best and final offers' after initial 'best and final offers' have been received, and after a previously announced closing date
- multiple bidders entering detailed contractual and legal discussions with the tendering agency, in parallel with each other, thus maintaining competitive pressure
- partial acceptance of proposals, e.g. acceptance of only the design components of a tender.

strategy

Clearly describe what needs to be procured

☒ Issues we have observed

The market tends to offer only what the purchasing agency specifies. It is, therefore, critical that agencies clearly specify their requirements when approaching potential suppliers.

A clear understanding of the functional, technical and commercial specifications of potential suppliers is crucial to a good procurement outcome, by ensuring:

- better understanding of project risks
- appropriate estimation of project costs
- a good fit with current ICT systems.

Illustration

To develop user requirements the partner agencies:

- formed internal user groups that consulted with operational staff and external technical advisers
- studied similar systems operating nationally and internationally
- appointed senior representatives to the project steering committee and the project management team, to ensure an ongoing focus on user needs.

The governing body formally endorsed the specified user requirements before approval of the request for expressions of interest and request for proposal documents, and the memorandum of understanding (which preceded the contract).

☑ Practical steps to take

Specify solutions or outcomes, not just inputs and outputs

To encourage innovative bids and better value for money, consideration should be given to specifying desired solutions or outcomes rather than just detailed inputs or outputs.

Commission an independent check of the specification and requirements. Make sure that they reflect the needs identified in the business case, and are affordable and technically feasible.

Prefer proven technological solutions

Issues we have observed

Improvements in ICT occur at a rapid pace and vendors constantly offer newer technologies promising better solutions.

However, our audits and international research show that investments based on unproven technologies are very risky and susceptible to extensive delays, cost overruns and failure.

Illustration

The agency chose an existing and proven version of the software despite the vendor promoting and promising a new and transformational product that it was still developing.

Overseas, several government agencies had procured the promised new version of software. This new software did not materialise as scheduled, leading to significant delays, cost overruns and loss of confidence of key stakeholders in the investment.

Practical steps to take

Minimise customisation

Give preference to known rather than new technologies, and minimise customisation of standard software.

Be aware of the risks of a fixed-price contract

？ Issues we have observed

Fixed-price contracts are one response to the desire for certainty, transparency and probity in acquiring and using ICT resources. Such contracts can be an effective way of managing small, tightly specified projects. For larger, more complex projects; however, fixed-price contracts are often problematic.

Complex projects are not typically, (and often cannot be) completely specified in advance—the details of later stages of the project are determined by the outcomes of earlier stages. This is not necessarily an indication of weak or incomplete planning, but rather simply a recognition that knowledge will increase as the project progresses.

In this environment, using a fixed-price contract for the entire project is at best optimistic and at worst deceptive.

The result often is a project delivered with reduced functionality—for the purposes of staying within the agreed budget—or a project delivered with increased cost to provide the agreed functionality.

Illustration

The use of a fixed-price ICT contract for the design, build and rollout of the project, and provision of ongoing maintenance and support, while seen as advantageous because it identified potentially adverse cost variations, proved to be problematic.

In an environment where the business case had not been properly developed and the relevant parties were not fully informed, this led to the project scope being subject to significant ongoing change.

Ultimately these problems contributed to the cost and time overruns on the project.

☑ Practical steps to take

'Chunk' large investments

Agencies that use fixed-price contracts for ICT projects should attempt to break the projects into small pieces and contract for each piece separately.

This will require additional time for contract negotiation and funding approval, but will increase the likelihood that the expected functionality is actually delivered at the expected cost.

Agencies that use a single fixed-price contract for a large, complex ICT project should make contingency plans for the likely outcomes of overspending and under delivery.

Use appropriately skilled people to oversee procurement

Issues we have observed

A lack of commercial acumen is often a reason for poor ICT procurement outcomes, as agencies may simply lack skills and knowledge about what is feasible and realistic.

Agencies might have staff with knowledge of the business process driving procurement; however, these staff often lack commercial skills or an understanding of the technology markets.

Illustration

Due to inexperienced staff and poor oversight, no formal acceptance criteria had been defined and no critical evaluation of the engaged contractors was conducted.

Contractors who did not have the skills to deliver the complex system were hired.

There were no steps taken to ensure that contractors understood their roles, their performance was not measured and appropriate contractual mechanisms were not implemented.

Practical steps to take

Supplement in-house expertise

Investors need to ensure that they have access to:

- staff or external consultants who are skilled in, and understand the ICT market and procurement processes
- a governance board that has commercial skills, business acumen and appropriate expertise.

Ensure a transparent and fair procurement process

Issues we have observed

Failing to ensure you have the right structure, roles and governance to oversee your procurement can lead to severe reputational damage to the agency and the investment.

Illustration

After the conclusion of the procurement process, a complaint was made by an unsuccessful tenderer alleging a number of process breaches, as well as a conflict of interest between a staff member of the agency and the successful tenderer.

A conflict of interest complaint was found to be substantiated due to the fact that an employee had inappropriate social contact with a tenderer during the bidding phase.

However, the investigation also found that agency's decision-making about tenderers was not made by any one individual and this inappropriate social contact did not have any impact on the outcome of the tender.

Practical steps to take

Pay close attention to the applicable probity requirements

Seek advice, and consult the guides and codes prepared by the Department of Treasury and Finance, the Victorian Government Purchasing Board and the State Services Authority.

Appoint probity advisers and separate probity auditors to ensure that the right advice and assurance is available.

Provide probity training for staff involved in tendering.

Further references

DTF guidance

Gateway information can be obtained from
http://www.gatewayreview.dtf.vic.gov.au/

- Gate 3, Readiness for Market,
  Gateway Initiative, Gateway Review Process.
- Gate 4, Tender Decision,
  Gateway Initiative, Gateway Review Process.

Partnership Victoria information can be obtained from
http://www.partnerships.vic.gov.au

- Partnerships Victoria Policy Framework,
  Government of Victoria, 2000.
- Partnerships Victoria Practitioners' Guide
  www.partnerships.vic.gov.au.

Life Cycle Guidance information can be obtained from
http://www.lifecycleguidance.dtf.vic.gov.au

- Investment Life Cycle Guidelines—
  Project Tendering, July 2008.

Project Alliance information can be obtained from
http://www.dtf.vic.gov.au/CA25713E0002EF43/pages/asset-management---project-support-project-alliancing

- Project Alliancing Practitioners' Guide,
  April 2006.

Other guidance

The Hidden Threat to E-Government.
Avoiding large government IT failures,
OECD Public Management Brief No.8. 2001.