



# **Partnership between Employment Services (PARES) Strategic Dialogue 2015 Contracting Out**

11 February 2016

## **Recommendations to Employment Services**

The PARES (Partnership between Employment Services) initiative is part of the Europe 2020 strategy. The initiative supports EU-level dialogue to promote cooperation between different forms of employment services (public, private and non-profit) and to identify where they can deliver complementary services, with the ultimate objective of improving the functioning of labour markets in Europe. PARES Strategic Dialogues (SDs) provide a forum for relevant stakeholders to discuss specific issues, to identify and share best and promising practices and to develop consensus based recommendations targeted at policy makers and/or practitioners to take the issue forwards.

This final PARES SD held in Brussels on 11 February 2016 brought together representatives from thirteen public employment services and municipalities from twelve countries. Each participant was involved in the procurement and design of contracts with external agencies for the delivery of a diverse range of employment programmes and services. The event allowed representatives to share experiences and insights on the types and packaging of services to be contracted out; pricing and remuneration models; the organisation and evaluation of tenders; and systems of contract monitoring and performance management. This expert dialogue concluded that the impact of contracted out employment services is shaped by the design of the contracts (particularly the payment model), the selection of the providers, and subsequent contract and performance management.

This document presents a series of consensus observations and recommendations for public employment services (PES) and municipalities which are derived from the dialogue at the meeting.

### **1. The rationale for contracting with external providers and the different types and packaging of services procured in different countries**

#### ***Consensus observations***

The dialogue identified a number of reasons why the PES, Ministries and municipalities contract with external providers for the delivery of employment services. They may do so to complement PES services and utilise specialist skills and/or additional capacity by expanding the pool of potential providers. The introduction of competition and tendering for contracts can also, reduce delivery costs, stimulate innovation in service delivery and give access to skilled staff and services unavailable in the public sector. Contracting out also enables public authorities to expand or reduce service delivery capacity without assuming the long term commitments involved in public sector employment. External contracting of employment services may also spur improved performance in the PES, both through competitive pressure and 'best practice' transfer.

The types of services contracted out varied considerably between countries. In the countries represented at the SD it was common for programmes such as job search

assistance and placement, self-employment support, and skills training, to be contracted out. It was also common for external providers to be contracted to work with the long term unemployed, many of whom have complex barriers which the PES does not have the capacity to meet, including contracting with non-profit specialist or community-based providers (which it was reported some disadvantaged clients will be more willing to engage with).

The contracts in use covered a continuum ranging from small scale contracts which target specific services to be delivered to particular clients groups, as in several of the newer Member States, through to 'black box' or 'grey box' contracts in countries with more mature contracting systems. Such arrangements give providers greater flexibility in how they design services to secure the objectives and outcomes that the purchaser wants the provider to achieve as, for example in the UK 'Work Programme' or in a smaller experimental contract recently implemented in Finland.

Several countries made use of framework agreements which enabled the purchaser to pre-select providers who could then be chosen for referrals by local offices or personal advisers. The PES in the Netherlands had moved from a traditional tender model and now used framework agreements to deliver two types of services (one specifically targeted at getting people fit for work the other targeted at job search and placement). There was also some experience of using personal budgets with the PES in Lombardy combining conventional tenders and personal budgets. The use of such personal budgets was one of several mechanisms which enabled front line advisers to facilitate greater client choice of provision on the assumption that such personalisation improved client motivation and engagement and provider responsiveness.

### **Recommendations**

Contracting out employment services involves risks of 'creaming' and 'parking' where providers may, deliberately or not, concentrate efforts on those job seekers perceived as more easily trained or likely to be quicker to place in employment. There is also a risk of 'gaming' where providers might take advantage of weaknesses in system design to, for example, artificially boost performance. Dialogue participants suggested that the risks were often exaggerated and that the terms used to describe such risks were themselves 'ethically loaded'. Participants discussed a variety of methods that had been used to ensure that the needs of more disadvantaged job seekers are met by providers, concluding that **the risks associated with contracting out service delivery can be minimised through well-targeted eligibility rules, good contract design and performance management.**

The dialogue identified the contrasting merits that arise from different contract designs, including important choices to be made concerning the size and duration of contracts. **A contracting system with small and short-term contracts offers flexibility** by enabling the PES or municipality to review contract terms frequently, adapt services, and competition may be enhanced because poor performers can be quickly excluded with low entry costs for other potential providers. **However, small and short-term contracts may involve relatively high transaction costs**, and there was a trend in countries with greater experience of national or regional contracting to move towards longer duration contracts either directly or by allowing for contract renewals where providers were delivering good services and meeting performance expectations. **It is recommended that the PES or municipality design procurement and contracts in ways that provide greater stability in service provision and give external providers incentives to invest more in their staff and service delivery capacity.**

Whatever strategy is chosen **it was recommended that employment service purchasers consider the impact that their decisions on contract and payment design have on market development and the viability of providers.** The capacity of each PES's contracting system relies on the existence of a pool of suitably qualified providers willing to bid to deliver services. One key problem is that in many countries, especially in the newer Member States, the pool of potential providers is limited and even in those countries with mature contracting systems there may be few providers in rural

areas or areas of high unemployment. In some countries, such as Estonia, provider interest was increased after the PES initiated dialogue with potential providers and adjusted contractual terms. **Purchasers should make use also of contract arrangements that help develop home-grown provider capacity and encourage local organisations to bid for contracts.** Such practices can include awarding grants for 'capacity building' through to payment terms that help cover initial start-up costs or the costs of a provider moving into a new locality. Such payments help with cash flow including initial expenditure on leasing premises, purchasing equipment or hiring of new staff. In some circumstances, further **consideration could be given to developing purchasing strategies in ways which help build the capacity of smaller non-profit intermediaries** to work more effectively with particular participant groups or in specific localities including, for example, support for organisations submitting bids for the first time.

Large scale contracts can also be designed in a way which requires bigger for-profit providers to work with smaller specialist organisations, including those in the voluntary and community sector. National or international providers can be required to show that they have developed local supply chains which have the capacity to best meet the needs of more disadvantaged clients and communities. It is also possible for the purchaser to **encourage the formation of consortiums which bring together smaller organisations** that would otherwise not bid for contracts. A parallel approach was adopted in the UK where the Newcastle local authority acted as the lead contractor for a group of smaller local non-profit providers. Each of these approaches can **help build capacity and expertise in smaller organisations which in future may enable them to bid independently to deliver contracts.**

In those countries where contract packages are designed and procured centrally or regionally it is important to enable the local PES and stakeholders to have some input in contract specification so that provision can be tailored to more effectively meet local labour market and jobseeker needs. **It was recommended that the PES or municipality foster cooperative relationships between public sector staff and contracted providers.** This can be essential in ensuring that the referral and attachment of clients works smoothly and that any problems are swiftly tackled.

## **2. The pricing and remuneration models used in contracts by the PES and municipalities**

### ***Consensus observations***

In each of the countries the Ministry, PES or municipality used a competitive bidding process to select providers to deliver employment-related services, with successful providers awarded contracts with varying amounts of 'process payments' (often dependent on delivering services) and 'outcome payments' (including job placement and employment sustainment). The SD considered the relative merits of a wide variety of pricing and remuneration models. There were many variants in use, ranging from fee-for-service to fixed price and competitive pricing models.

One primary objective of contracting is to reduce or restrain costs but it is **important that the design of the contract and procurement process does not encourage unrealistic bids and cost estimates.** Many countries had experience where price competition had encouraged unrealistic pricing which during subsequent 'live running' had resulted in poor service quality, limited provider capacity, stifled innovation and encouraged creaming and parking. **The acceptance of the lowest priced bids also risked undercutting better providers who may submit unsuccessful but more realistically priced bids** that are better designed to adequately underpin the quality of service provision.

The design of contractual payment systems also needs careful design. Remuneration models varied significantly usually combining sequenced payments, or a proportion of a final price, paid after services were delivered or after certain milestones were reached. A proportion of the agreed payment was often dependent on a successful outcome, such as a qualification achieved, a job placement, and/or a sustained employment outcome. Such

'payment-by-results' models were quite common but there was considerable variation in the proportion of payment that depended on securing contractual outcomes. Participants discussed the importance of differential payments where the combination and relative weights of process and outcome payments were typically calibrated with the characteristics of different client groups. **The proportion of payments that depend on job outcome payments should be higher for groups more easily placed in work and lower for groups with the greatest employment barriers.**

### ***Recommendations***

Price competition is important but **SD participants recommended that procurement be designed in ways that avoid competition which might induce low but unviable bids.** Where price competition is used dialogue participants recommended that bidders should be asked to show how they will be able to deliver the quality of service expected, and for such claims to be scrutinised during the bid process and monitored during subsequent delivery. The PES or municipality will need good intelligence and insight into the inputs and service costs likely to be incurred by a provider in order for them to make effective judgements on the price and quality outlined in provider bids.

In some countries the PES awarded contracts on the basis of the lowest priced tenders but it was more common for purchasers to use more sophisticated criteria taking full advantage of the 'most economically advantageous tender' (MEAT) criterion allowed by European procurement legislation. These rules enable the contracting authority to take account of criteria that reflect qualitative, technical and sustainable aspects of the tender submission as well as price when reaching an award decision. SD participants recommended that the PES and other contracting authorities **make use of points based systems and that bids are assessed using all or some of the following award criteria – price/cost; organisational capacity (including staffing, experience, and technical or other resources); and past performance.** The value given to the different criteria should be weighted reflecting the characteristics of the client groups involved and their relative disadvantage.

SD participants recommended that in their bids providers should be required to outline how they propose to deliver services and secure outcomes and that these narratives should be tested against the prices they say they will deliver services for. Providers should also be required to **provide implementation plans and demonstrate that they have undertaken the advance planning required so that services can actually be delivered on time.**

## **3. The design and evaluation of tenders and the role of performance management**

### ***Consensus observations***

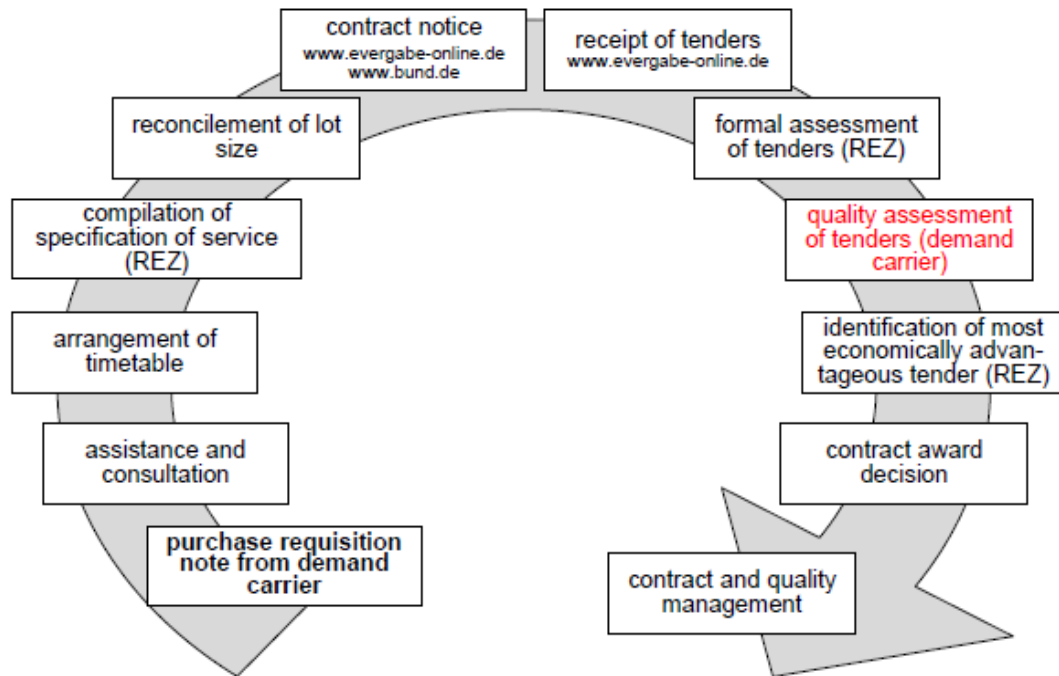
A key feature of effective contracts is a well-defined specification of service requirements in the tender document, with a clear outline of the terms of the contract and the payment system, including definitions of key concepts, such as what explicitly constitutes evidence of a job outcome and sustained employment. Longer contracts also should indicate 'break-clauses' and specify the situations in which terms might be renegotiated enabling both parties to resolve unanticipated problems and to respond to changed circumstances.

In each of the countries the procurement of employment services through contracts typically involves several phases after the policy, eligibility group and service objectives have been decided (see, for example, Figure 1 outlining the steps of the contracting process in Germany). These phases includes deciding the procurement timetable; the design of the tender document; publication of the contract notice; receipt and assessment of tenders; and contract award decision and post-contract discussions. This is followed by implementation, delivery and performance management.

The participants reported that there is often pressure on the procurement timetable. A tight timescale is imposed first on the contract specification, then on the time allowed for bid writing, and finally on the time allowed for implementation of the service. **It is**

**recommended that procurement time scales are not squeezed too tightly, because such pressure heavily favours existing providers, works against new market entrants and often results in early problems in implementation.**

Figure 1. Steps of the contracting out process in Germany.



### Recommendations

There was variation in approaches to tender and contract design in the degree of flexibility and prescription on how providers should deliver services. **The aim should be to give contractors flexibility to use their knowledge and skills but balanced by requirements that ensure particular services are delivered and quality standards met.**

After tenders are received specialist procurement staff evaluate bids typically using some or all of the following criteria: price/cost, staffing, experience, technical and/or other resources, and in some systems aspects of previous performance. Each country used more or less sophisticated points systems to evaluate the relative merits of bids. **It was recommended that the design of such points systems should balance the quality of service offered with pressures on providers to keep costs down and lead to decisions which can be justified and communicated to unsuccessful bidders.**

Participants had different views on when to consult with potential providers, and other stakeholders. **It was considered that early consultation is an important part of the process in ensuring the viability of a procurement and that potential and attractive bids will be forthcoming.** In one country there was criticism of an earlier approach where the 'tender was a quiz' with potential providers having to 'guess' the intent of the purchaser which had now been replaced by a more open dialogue so that providers had a much clearer understanding of the services required and the expectations of the purchaser. **Provider capacity and future bids can also be improved by giving tailored feedback to contractors on why their bids were not successful.**

The behaviour of the providers is not only shaped by contract design and pricing. **The quality of the service and its performance must be assured and enhanced through effective contract and performance management.** This process requires clear information and reporting systems that enable the PES or municipality to track participants, monitor provider performance and verify the quality of service delivery and outcomes. The remote monitoring of management and performance information by officials must be supplemented by more or less regular performance review meetings with providers. It was

suggested that site visits by contract managers should be undertaken early in the contract delivery cycle, to identify emerging problems, and/or targeted at providers who may be considered higher risk. The content of such site visits may include reviews of individual action plans, interviews with job seekers, performance data analysis and, where problems are identified; contract managers can review service delivery strategies and the caseloads, training and development of provider staff.

Alongside a clear system for tackling underperformance, there is a need for learning from high performance to increase service impact across externally contracted provision. This learning process can be improved by the regular, transparent reporting of performance data, sharing the information across providers and with wider stakeholders.

**SD participants emphasised the importance of contracting agencies independently monitoring client experience and ensuring that robust systems can respond to complaints of unfair treatment and poor service delivery.** This often involved feedback from clients via local PES offices, as in Slovenia, but it could involve also more systematic customer satisfaction surveys as increasingly used in assessing mainstream service delivery by many PES's. These instruments are important both because they provide important information on service delivery and because they can militate against 'parking' where contractors might otherwise focus disproportionate attention and resource on participants perceived as easier to place.

The development and management of contracting systems is a complex and difficult task for policy makers and PES and municipal officials. There is a sharp and continuous 'learning curve' and the experience of PES's such as VDAB in Belgium, show that it takes time to learn how to steer the system to minimise perverse incentives and to capture the additional capacity, efficiencies and innovation that external providers may offer. PES and municipal staff involved in procurement and contract management require specialist skills, expertise and continuous training in contract design, pricing, new legal requirements, service delivery and performance management.

The participants remarked on the unique nature and added value of the dialogue in bringing together PES and municipal staff with distinctive operational expertise. They **recommended that the European Commission should promote future similar exchanges facilitating more in-depth best practice exchange between PES's and municipalities in contract design, procurement and performance management.**