Advanced Diploma in Purchasing and Supply

Contracting in the public sector
L5-14

Senior Assessor’s Examination Report

Series
May 2010

LEVEL 5
SECTION A

Q1 Peter Linward was unhappy that Bob Weaver had not followed due process in awarding this contract. Describe a tendering process that Bob should have followed in awarding the hydrocarbons contract to fully satisfy legal requirements. (25 marks)

Analysis of the Question

The question aimed to test the candidate’s ability to understand why the tender process in the Case Study was inadequate and detail what robust procedures are required to be put in place. The case study itself was a familiar scenario for candidates who had studied past papers and Question 1 clearly signalled that a due process had not been followed.

Analysis of the Answer

Many candidates either took a more generalist process approach to this question by describing how a tender process is undertaken or they took a very detailed approach explaining the exact thresholds, timescales and obligations for a particular tendering process (normal restricted process). Both methods attracted marks.

Better answers revolved around the fact that Bob did not follow a recognised tendering practice for a public authority.

To satisfy legal requirements, Bob should have complied with the EU Public Sector Directive. Candidates gained marks by describing:

- Principles of non-discrimination, fairness, transparency
- Need to advertise in OJEU
- Maximum length of 4 years for a framework contract
- Different types of procedure (Open, Restricted, Negotiated, Competitive Dialogue)
- Use of defined criteria at pre-qualification, contract award
- Standstill period.

Exam Question Summary

The answer should not have concentrated exclusively on EU requirements. There should also be discussion on the need for:

- Stakeholder involvement
- Proper delegations of authority
- A process for declaration of interest
- A plan of the timescales for running a competition
- A contract strategy and a risk assessment
- A well-controlled tender opening process.

For such a key area of public operations there was ample scope for candidates to score well across a number of learning objectives. However, many answers lacked depth and some responses tended to contain factual inaccuracies. One or two of the better answers mentioned theories and authors such as Dobler and Burt, Lysons and Gillingham etc. and these gained marks.
Q2 Prepare guidance for Marchton County Council employees on the principles and processes that should be followed in best practice procurement, in order to avoid the problems encountered in the case of the Piltdown Fuels contract. (25 marks)

Analysis of the Question

Question 2 allowed candidates to widen their replies on the case study from the quite narrow area of tendering processes required in Q1. The question tested candidate’s ability to interpret key issues in the Case Study and describe best practice improvements that could be made, a wide remit with latitude shown in marking.

Analysis of the Answer

The marking scheme here was wide allowing scope for innovative answers including (In the form of guidance for employees);

- The need for a legally compliant tendering process and how to use the competition requirements to the Councils’ advantage
- A full risk assessment using tools such as PESTLE
- A contract strategy looking at alternatives option (such dual source) and length of contract (such as 2 year + additional 2 year option)
- Detailed market analysis
- Examination of other possibilities such as joining forces with neighbouring councils in a collaborative arrangement
- A full supplier evaluation process
- Involvement of technical experts
- Stakeholder management, particularly with Peter Linward.

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- A process for declaration of interest
- A plan of the timescales for running a competition
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Candidates described how and why the relationship with Piltdown broke down. Piltdown were struggling to meet the requirements of the contract and Bob took an adversarial “it’s not my problem” approach, when they had cash flow problems. Bob had also concentrated on price almost to the exclusion of other criteria, when awarding the contract.

Amongst many measures available Bob could take:

- Ensure the “Five Rights” are addressed in the award process
- Initiate early supplier involvement, particularly as there is a design element in the uniforms contract
- Ensure that the payment profile is such that the new uniform contractor is not going to get into financial difficulty
• Include an “early warning” provision in the contract, such that both parties are encouraged to share problems and can solve them quickly and in a spirit of mutual trust
• Regular progress meetings with opportunities for review, innovation and cost savings
• Shared Resources, e.g. the Fire and Rescue Service may provide resource to participate in the contractor's design review and inspection processes
• Some form of cost incentivisation in the contract.

Some candidates recognised some of the above points in their responses.

Exam Question Summary

Candidates seemed to approach this question in very different ways. Some produced what seemed a description of everything they knew about public sector purchasing. Some repeated lots of the material for question 1. The stronger answers focussed on the principles outlined above, as well as the process and gained marks accordingly. In the main, it was well answered.

SECTION B

Q3 (a) Examine the policy and EU/UK(OGC) rules on involving potential suppliers early in the public sector specification process. (15 marks)

Q3 (b) Define cross functional team working, and explain in what areas cross functional teams could have an influence on procurement strategies. (10 marks)

Analysis of the Question

Part (a) of the question aimed to test candidates’ knowledge of the policy on involving potential suppliers in specifications and the policy nationally and across Europe.

Part (b) A straightforward question requiring candidate to firstly define cross functional team working, and then go on to explain in what areas cross functional teams could have an influence on procurement strategies.

Analysis of the Answer

Part (a) There is clear policy on this area. When the specification is being developed it is important that the users of the product or service are consulted in order to ensure that what they actually need is clearly described in the specification (and not the perception of what they need). Good answers demonstrated this.
The process is usually strengthened by including some users in the tender development and evaluation process, taking account of their expertise and understanding of the required solution.
Having said that, there are within the public sector strict rules and policy to control the involvement of potential suppliers in spec preparation. Candidates could have examined the following;
• Ensure no action is taken to skew competition notwithstanding STA and IPR
• When engaged in soft market testing where a possible technical solution is researched, that output solutions are considered
• When consultants used to prepare specs they must normally not be allowed to provide the good or service
• No discrimination in the award takes place
• EU Procurement directives are adhered to in full particularly when Negotiated or Competitive dialogue procedures where specs may be discussed up to the point of BAFO being received.

Candidates could also have reviewed the OGC public sector policy stating that the requirement may be discussed in consultation with suppliers as part of market sounding or after the supplier selection stage. This can be useful to aid innovation and should be handled with care to ensure a level playing field. The spec needs to be finalised before it is issued to suppliers with, depending on the procurement strategy, an ITT or an invitation to submit a proposal. OGC (from the document “an introduction to public procurement) says also that when developing specifications. It is important to provide sufficient detail to allow the market to respond to requirements, whilst leaving room for innovation where appropriate. Output or outcome-based specifications should normally be used.

These focus on what authorities want to achieve, not how a supplier is to provide it. This challenges suppliers and gives them the scope to develop innovative solutions. In certain circumstances it will be essential to specify exactly what is required in detail (e.g. for specialised laboratory equipment). Specifying an accepted industry standard for a technical solution is also good practice; specifying non-standard or ‘gold-plated’ solutions will always lead to higher costs.

**Part (b)** Firstly candidates should have defined cross functional team working. Then explain in what areas cross functional teams could have an influence on procurement strategies.

Cross-functional teams typically comprise individuals with a functional home base (e.g. engineering, personnel, marketing) but who work collaboratively on issues or processes requiring diverse resources. There are four key areas that distinguish cross-functional teamwork from more conventional teams and candidates could develop this:

- functional diversity
- competing identities
- integration in the organisational structure
- performance expectation.

Better answers then went on to explain areas in relation the influence on procurement strategy including:
- Features of service outcomes
- Planning of projects
- Definition of milestones
- Quality issues
- Cost driver identification
- Cost savings
- Expert determination of functions
- Outsourcing strategies
The above list is not exclusive and marks were gained for relevant examples in team working, synergies brought etc.

Exam Question Summary

**Part (a)** This question, on balance, was probably the least favoured by candidates and on the whole wasn’t tackled well. Some candidates took extreme positions wrongly suggesting that the regulations specifically disallowed any ESI whatsoever. The basics of an answer were usually covered with very little examination or development as per the command words/level of the paper.

**Part (b)** Most candidates were able to understand what was required from this part of the question and described some of the key roles in cross functional team working. Again very few strong answers but nearly all candidates were able to ‘pass’ by articulating a basic answer.

**Q4** ‘Government is taking the issue of sustainable practice and procurement very seriously, but we need to do a lot more in order to meet the targets we have set ourselves.’
Source: ‘Turning up the pressure: Government takes action to get sustainability back on track’ OGCs ‘Insight’ p18, July 2008, Nigel Smith, Chief Executive, OGC.

Identify the sources of the sustainability agenda and discuss how the sustainability targets might be achieved in the public sector.

**Analysis of the Question**

The question required a little more than a running commentary on Sustainable Procurement but an identification of the source of the sustainability agenda and its targets.

**Analysis of the Answer**

Within the marking the assessor rewarded a wide variety of responses looking at candidates’ knowledge of the current policy on and sources of sustainability in the procurement sphere especially.
Nigel Smith’s quote is still topical (maybe now more than 2008 and some candidates did mention this to good effect) and gave candidates a wide remit.
Candidates used a variety of sources including green procurement, energy efficiency, Government estate, recycling, whole life costs, Procuring the future (Simms) task force and targets, biodegradability, ethical procurement, fair trade, SMEs, minority owned businesses and many more.
Currently central government are mandated to use ‘Quick Wins’ through a Ministerial commitment.’ Quick Wins’ is a list containing a number of categories across a wide range of commonly purchased products and identifies minimum environmental standards for...
each. If public sector procurers buy to these specifications, it is a ‘Quick Win’ in helping Departments meet these standards and produce savings for the environment.

'Quick Wins' cover a range of commonly-purchased goods, including IT equipment, white goods, paper and construction materials. The standards relate to characteristics such as energy consumption, recycled content, and biodegradability. In 2008 the environmental standards also now include a ‘Best Practice’ higher level.

Regarding sources, the Government's Sustainable Procurement Action Plan (SPAP) was published in March 2007 and together with HM-Treasury's 'Transforming Government Procurement', formed the central government response to the recommendations of the industry-led Sustainable Procurement Task Force (Simms). Quick Wins formed part of those recommendations and one or two candidates gave some good examples of “low hanging fruit”.

In addition all government departments and estates have sustainable operations targets to meet (SOGE), covering areas such as energy efficiency, water consumption, waste and recycling and use of the 'Quick Wins' minimum environmental standards can assist in meeting these targets.

This question offered a wide potential to score well and the suggestions above are not exclusive. Evidence of current reading around this key policy was rewarded.

Exam Question Summary

Stronger answers clearly stood out by referencing recent publications such as the Simms work progress, key articles from magazines and good work examples. Other answers identified the sources in a literal sense to mean sources of sustainability rather than sources of information/agenda, however marking latitude was allowed.

Q5 (a) Describe the competitive dialogue procedure. (18 marks)
Q5 (b) Distinguish between the competitive dialogue procedure and the competitive negotiated procedure. (7 marks)

Analysis of the Question

Part (a) required candidates to quite simply describe the main features of the competitive dialogue procedure. Note the command word “Describe”.

Part (b) was aimed at testing the candidates’ knowledge of differences in negotiated and CD procedures.

Analysis of the Answer

Part (a) Competitive dialogue was introduced in the public sector procurement directive (2004/18/EC), which has been implemented in the Public Contract Regulations (SI 2006/5) with effect from 31 January 2006. This was a good start for the better candidates. Competitive dialogue is a flexible procedure for use in complex projects where there is a need for the contracting authority to discuss all aspects of the proposed contract with candidates. Such dialogue would not be possible under open or restricted procedures. In the past many complex projects were procured via the Negotiated Procedure. With the introduction of the competitive dialogue procedure as an alternative
procedure the commission has reiterated that the Negotiated Procedure is only available in “exceptional cases” (see question summary below and part (b) of this question). Competitive dialogue does not necessarily represent a major or fundamental change to the way in which complex procurements have been undertaken in the past and reinforces many of the best practice messages including;
(a) Undertaking a thorough assessment of the needs and objectives of the procurement
(b) Ensuring the procurement process in conducted in an efficient and effective manner which minimises costs and maintains competition
(c) Ensuring contract terms and risk allocations are settled during the competitive stage.
Other main features;
• Dialogue is allowed with selected suppliers to identify and define solutions to meet the needs and requirements of the contracting authority
• The award is made only on the most economically advantageous tender criteria
• Dialogue may be conducted in successive stages, with the aim of reducing the number of solutions/bidders
• There are explicit rules on post-tender negotiations.

There is a possibility that the introduction of this procedure, which provides the authority with less scope for variation during the process, combined with the standstill provisions and the new remedies directive, may result in an increased risk of challenge to the procedure and some candidates commented on this.

Part (b) Competitive dialogue has now (in effect) replaced the negotiated procedure.
The main differences are;
• A structured tendering approach, in stages, is now provided for
• There are rules on the conduct of discussions at the post tender stage both with tenderers who have submitted final bids
• There are rules on the conduct of discussions at the post tender stage with the bidder who it is evaluated has provided the most economically advantageous tender (preferred bidder)
• There is now a final “end of dialogue” stage

Competitive dialogue was negotiated for use in complex projects. It can be used when;
• Open or restricted procedures would not allow
• Where the contracting authority are not objectively able to define the technical means capable of satisfying their needs or objectives in a complex project and / or
• Are not objectively able to specify the legal and/or financial make up of a complex project.

Examples of complex projects might be; integrated transport infrastructure projects, large computer networks, or projects involving complex and structured finance where the legal and financial make up cannot be defined in advance and the authority might not be in a position to be clear about their requirement or be able to know what the market can offer.
Exam Question Summary

Part (a) was answered fairly well on the whole. Surprisingly at times for people involved in public procurement there were some glaring factual inaccuracies especially around the differences in CD and Negotiated procedure (which now must only be used in exceptional circumstances and should really been left for part (b) but most candidates scored fairly well on this part of the question and were able to describe a CD process from start to award. Some candidates went further and were able to reference examples of CD they had undertaken/knew of/had read of – always advisable at this level.

Part (b) For only 7 marks some candidates repeated all of part (a) over several pages which were not required.

In some cases part (b) was less well answered than part (a) (even though it is covered in past SA reports) and candidates tended in some instances not to understand the clear differences between a Competitive dialogue (CD) process and a negotiated process. Interestingly candidates tended to still refer to the CD process as very new although it has been available for 4 years. Many did acknowledge lack of case law which was rewarded.

Q6 Explain the benefits and costs of developing a partnership relationship, based on mutual trust, with suppliers. (25 marks)

Analysis of the Question

Again a straightforward question for candidates to demonstrate knowledge of benefits and costs of partnerships.

Analysis of the Answer

A similar question is asked at all levels of purchasing studies from Level 2 onwards so candidates should have been able to approach this question with confidence, and most did with the good answers giving actual public sector examples of costs and benefits befitting a Level 5 paper.

The question asked candidates to examine the benefits and costs of developing a partnership relationship, based on mutual trust, with suppliers.

There are many areas to examine including:

Costs
Hard costs such as systems, HR, relocation, capital, marketing, insurance.
Soft costs such as culture, trust, failure, management pressures etc.

Benefits
Also there are many benefits which can flow and candidates could examine areas such as communication, financial, training, integration, requirement understanding, dispute resolution, process improvement, quality understanding and many more areas.
Some other key areas which better answers referred to;

- In partnerships people are key
- Build and develop relationships
- Relationships between customer and supplier need to be collaborative, not necessarily contractual
- Open; trust; win-win; communication
- Customers and suppliers should be treated as partners in the activity
- Focused on outcome; some contact with target customers; shared responsibility
- Fit with the organisational culture in the public sector
- Level of formality; sponsorship from senior management; style
- The outcome and its continued value for target customers provides the mandate
- Can be highly effective.

But....

- Costly in terms of time and effort (human resources), both to setup and maintain
- Difficult – right people needed with the right skills
- Complex
- Volatile
- Delivery is dependent upon the partnership: dependent upon people.

The above list is not exhaustive and many other areas were referred to and attracted marks (e.g. the whole PFI question, a person who is a partner today can be a competitor tomorrow and more).

Exam Question Summary

This question was probably the most strongly answered question by those who decided to tackle it. Excellent use of diagrams and pre-amble on the relationship spectrum and lots of examples were brought into responses. Whilst marks tended to be higher on this question, the lack of balance between benefits and costs (with benefits dominating in most scripts) tended to prevent very high marks being appropriate.

APPENDIX:

Syllabus matrix indicating the learning objectives of the syllabus unit content that each question is testing
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