Advanced Diploma in Purchasing and Supply

Contracting in the Public Sector

LEVEL     Level 5   L5-14

DATE: Exemplar Paper

TIME:

Answer Guidance
SECTION A

NEWTON DISTRICT COUNCIL

Question 1

This section was based on a fictitious public sector organisation but demonstrated common problems experienced with dominant suppliers, powerful stakeholders, unauthorised actions etc. Gershon, Lyons and Best Value have all pressured local authorities to improve efficiencies, increase performance and achieve best value for customers. However candidates were not required to have a detailed knowledge of any of these initiatives, indeed a précis of best value was provided in the text to clearly signpost candidates.

The question itself was broad and asked for steps to improve the council’s contractual position. “Contractual” here has a wider meaning than just the paper contract.

The marking schedule details the main issues based around relationships, power, contractual terms, legal and negotiation, summarised as:

- who should lead negotiations
- should the contract be totally re-negotiated?
- IPR issues
- marketing of service
- remedial plan
- liquidated damages
- sale of goods act
- variation details

and although indicative marks were given in the marking scheme candidates with the time available should probably review four or five problems and give their opinion of how they could be resolved.

To stress again, the examiner does not require all points listed here or in the marking scheme to be given, and, as mentioned above four or five good points well developed would score excellently.

Candidates are advised to spend approximately 30 minutes reading the case study and questions and digesting the information. Candidates may find it useful to make notes in their answer booklet and use spider or arrow diagrams to link key issues (e.g. IPR issues), it is recommended that 35 minutes is spent answering question 1. Candidates are encouraged to highlight areas within the case study or to draw up a short plan at the beginning of their answer.
Question 2

Part (a)

Candidates should produce a well presented document that could be used to be the basis of a briefing for Darren. It should be comprehensive to ensure the briefing goes well as the audience is likely to be demanding, remember the comment regarding outsourcing!

Bullet points can be used but an expansion would assist the examiners understanding. For non local authority candidates “best value” was not being examined and the examiner was looking for a clear case to explain why non price elements are important in public sector contracting.

The notes should make it clear that price alone cannot be used (in most cases) and support comes from all Government sources (OGC etc) as detailed in the marking scheme.

As this is a briefing, candidates should plan and be aware of the criticisms that may be faced or questions asked at the briefing. The better answers will not only address in detail the need for non price evaluation but show preparation of the response to criticisms (e.g. better value for money in the long run).

An explanation of competitive tendering is not asked for although its link to best value would earn marks. The majority of marks will be given for a clear and logical rationale that price is only one factor in a procurement decision, and the ability to make this convincing to a non believer (i.e. the Councillor) will score well.

As mentioned earlier marks will also be awarded to candidates who show an awareness of the criticisms and who have planned for awkward questions at the briefing.

Recommended time for part (a) is about 20 minutes.

Part (b)

This is very much a question where candidates from any public sector area can use their experience and put themselves in the place of Darren.

The examiner is looking for not only the answers in the marking scheme but for any plausible ideas or theories where a senior public official can seek power in dealings with suppliers at no financial cost, however it must have even a tenuous link to the case!

It should be noted that the exercise of power is not suitable in all areas and an acknowledgement of soft negotiation, partnerships etc would be rewarded but excellent marks could be gained for innovative thinking.

As 10 marks are available about 15 minutes should be allowed on part (b)
Question 3

To give some background to the question it is worth looking at the specific elements of a service contract. As the word “service” was in bold in the question candidates should only refer to goods or products in terms of how they differ in contract terms to services and bonus marks would be awarded for specific public sector examples:

(i) Services are intangible and are therefore difficult to describe and difficult to measure.
(ii) Customers will be more directly involved in the delivery of a service - it will probably take place on their premises. There may be other services that the customer has to provide before the supplier can deliver their part of the service - mains power to run a machine, for example - or the customer may have to provide equipment, time, and even personnel. These are all issues that may have to be written into the service contract.
(iii) Standards of Service are more difficult to define and measure as the performance of a service contract is more subjective – what represents good service to one user may be something different to another.
(iv) The quality of the service provision is harder to judge objectively. The intangible aspects of service provision also make objective judgement harder.
(v) Timing and delivery require closer supervision as both occur at the same time and in the same place and will usually be closer to the end user.
(vi) Sourcing and supplier appraisal can be more demanding – inputs have to be judged in terms of the outputs that they may be able to provide.
(vii) The “Right Price” is more difficult to establish as there are many variables affecting the price such as the quality and number of staff deployed; levels of management, quality of equipment used and any extras that may be unique to a particular supplier.
(viii) The use of “one off” specifications is more common as each requirement for services tends to differ from one organisation to another.

There is a tendency for service contracts to be of longer duration than goods contracts. Perhaps one reason for this is that the supplier’s learning curve is longer if they are delivering a service. Another might be because the relationship between supplier and buyer needs to be stronger for services than for goods. Changes in the marketplace also mean that some services are increasingly being packaged together, as with all-embracing ‘Facilities Management’ contracts that provide a wide range of different services under one contract.

Service contracts often require much closer contract management and performance monitoring than goods contracts. Service delivery will usually occur at regular intervals, and is usually highly visible to both buyer and end user.
With services there is a greater danger of Cartels and monopolies developing – particularly in specialised service provision, or where the start-up costs for any new service provider are high.

Suggested timings for question 3 is 35 minutes.

**Question 4**

In this question candidates were asked why organisations produce business cases and what should be included in one for a large public sector business case.

Twenty five percent of the learning objectives for this subject relates to developing of the business case so candidates should have a good grasp of the issues. Within the public sector there are many sources of reference including the treasury green book and the OGC and the NAO.

The question was in two parts allowing candidates to say why a business is produced by an organisation (in this case any type of organisation) and what should be included in a business case for a public sector procurement.

**Part (a)**

For 50% of the marks it follows that about 18 minutes should be spent on part (a). Although the marking schedule gives a comprehensive breakdown of the reasons, candidates do not need all of the points for full marks and a structured assessment of the four key areas detailed in the marking schedule;

- organisations can the right investment decisions
- organisations achieve whole-life value for money from investments
- organisations can act on the effects of change on an investment decision
- organisations can realise the benefits of those investments,

would score well.

This part of the task was very much a general question related to any organisation and this will be allowed for in the marking and practical examples will be rewarded.

**Part (b)**

Again for 50% of the marks similar time is advised to part (a). As mentioned in the marking schedule, candidates should give a short description of the key points listed. The list is not exhaustive and candidates will be given credit for relevant work.

The examiner is not looking for all the points listed to be described. Business cases vary and a structure based on section 1.0 of the Learning Objectives of this subject would score very well. As the question was related specifically to
the public sector areas such as the OGC Gateway procedure, Political influences, types of funding, governance arrangements etc should be described for excellent marks.

Question 5

Competitive dialogue has probably been the most talked about aspect of the new consolidated procurement directive, even though it is hardly revolutionary, and applies to a vast percentage of the public sector and its contracts, although the actual procedure should only be used in complex procurements.

Guidance about the procedure has been published by both the OGC and the European Commission and individual guidance in Departments, Local Authorities etc has been widespread.

However it is fair to say that as this is a new procedure and there is still some uncertainty amongst contracting authorities and bidders about its operation in practice, and it is stressed that the examiner does not expect a standard of answer a contract lawyer would provide; a well rounded response covering the main points detailed in the marking schedule would score very well. Therefore a mixture of practical and theoretical knowledge was required, although the practical knowledge was relatively high level meaning a candidate did not have to actually been involved in a competitive dialogue to score full marks.

As the procedure is new, and to clearly signpost required responses the question was divided in three clear sections;

- the main features of the procedure
- the main differences between competitive dialogue and competitive negotiation and
- under what circumstances competitive dialogue can be used.

Part (a)

As in any essay style question a short introduction is helpful, and although the index details of the legislation is referred to in the marking schedule, this is not required for full marks and is given for completeness. Candidates should demonstrate however that competitive dialogue was one of the key change areas in the new directive.

Candidates should be aware of key words and areas regarding the new procedure;

- it is for complex procurements
- dialogue is allowed for specifically
- MEAT is the only award criteria
- there are explicit rules on post tender negotiation.

A short discussion of each of the above points would warrant excellent scores, with outstanding candidates referring to the fact that this is not a fundamental
change to procedures but an evolution pressed for by public sector buyers, that challenges could follow and also that the Negotiated Procedure is now to be used very rarely if at all. Candidates should spend about 20 minutes on this section.

Part (b)

With 10 marks available the word “briefly” (in the question) for such a wide topic should be noted by candidates. With 10 marks available candidates should recognise that there is an even split to the two areas and plan accordingly. About 15 minutes should be spent on part b in total.

In b part one, as detailed in the marking scheme the examiner is not looking for legal definitions or analysis but brief note style details of the main changes and a knowledge of post tender and discussions at post tender would score maximum.

In b part two, again a brief outline of under what circumstances can competitive dialogue be used was required. The marking scheme very much reflects the Commission wording but candidates simply demonstrating that competitive dialogue should be used in complex procurements, where it is very difficult to specify requirements, would score well.

Question 6

This straightforward question looked at 3 popular areas all of which have been in the purchasing and contract press recently. The questions held no nasty surprises and the marks were split evenly so time on each aspect should be about 12 minutes each.

Part (a)

Cross functional teamwork is a concept increasingly used in the business case and all parts of the procurement and contracting cycle. For 9 marks candidates were expected to demonstrate what cross functional working means and develop the description and how synergy and value added can come together without factional disagreements.

Part (b)

Even without reading contracting texts or study guides, most people involved in public sector contracting will realising the impact environmental issues are having on areas such as business cases, ITTs, evaluation etc. The marking schedule is comprehensive and three or four of the points listed descriptively would ensure excellent marks.
Part (c)

Candidates are advised to explain the simplicity and transparent way that e-auctions can improve efficiency in their procurement and negotiation activities and in many ways secure significant savings. As part of the drive by the Treasury and OGC to promote the e-agenda candidates should have no real difficulty in part (c) due to its topicality.

The points listed in the marking schedule cover the main points and outstanding candidates may go on to comment on the treatment of e-matters in the new procurement directive and criticism from some quarters that e-Auctions tend to concentrate on price.

END OF ANSWER GUIDANCE