

Buying Professional Services



Risks and Reducing Risks

INTRODUCTION

For any organisation of scale, where there is an on-going flow of work that requires specific specialised skill sets, the optimal solution is to develop and utilise these skill sets internally. However most organisations will lack an appropriate specialised internal resource for particular “once off” activities or projects and all will need to employ at least some 3rd party resources to meet a regulatory or legislative need for example.

Such professional services can be defined as the infrequent, technical, or specialised functions performed by

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independent contractors or consultants or firms whose occupation is the rendering of such services (referred to in this article as a “Provider”). Examples would include: accountants, consultants, actuaries,

architects, lawyers, engineers and recruiters. The selection of a Provider in this area is usually based on skill, knowledge, reputation, ethics and creativity as well as cost.

Where a procurement function exists within the organisation (Client), the procurement of professional services should fall under the bailiwick of that function. However it would not be unusual for that not to be the case. For many organisations the purchase of professional services is amongst the least likely to be subject to the procurement disciplines that add such value elsewhere.

This article will make the case for the involvement of professional procurement and will show how using procurement methodology and thinking in buying professional services can reduce the risks inherent in these procurement decisions.

While much of what is said can apply to all organisations, compliance with statute or other regulatory considerations (not dealt with here) will play a much larger role in the public sector.

WHAT ARE THE RISKS?

The big risk is that the Client does not get what was needed and expected from the engagement of the Provider.

This can occur because of one or more of the following reasons:

- The wrong Provider was chosen.
- The Provider did not perform.
- Inappropriate resources were made available by the Provider.
- The Provider could not perform because of Client factors outside its control.
- The wrong solution was chosen because an insufficient or inappropriate range of solutions was made available by the Provider to the Client in the first place.
- There was a lack of progress towards the objectives.
- The cost was too high.
- The assignment took longer than anticipated.
- The assignment was bad value for money.
- There was a lack of client stakeholder buy in to the Provider's objectives and efforts.
- The Client was unable to appropriately support the awarding process.

WHEN DO THESE RISKS ARISE?

Assignments typically go wrong because the particular provider was selected and the instruction to that provider occurred before all of the necessary factors had been taken into consideration and thought through by



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the Client. All too frequently senior management when contacting potential providers accelerate from a briefing to a provider into a commitment to that provider in a way they would never do for other more frequently purchased services or goods. What starts off as a briefing to or a discussion with a potential provider can turn all too easily into an ill defined, open ended and very expensive instruction.

The decision that the work needs to be done externally should be separated from the other decisions

Very often senior management or board approval that a piece of work must be externally sourced triggers a commitment to a particular provider before sufficient effort is taken in finding out if the suggested provider, price or solution is the best available. The decision that the work needs to be done externally should be separated from the other decisions.

Entering into a commitment too early increases the possibility of an unsatisfactory outcome greatly.

This can be particularly true in the case of engaging legal services. Normally when a need for legal services emerges, the first firm called gets the work and

any possibility of an objective and possibly necessary selection process disappear regardless of the potential spend. The immediacy or scale of the potential issue and the perceived urgency with regard to making progress on that matter can dwarf all other considerations – until the invoices start arriving and someone starts asking difficult questions.

What should be clearly remembered is that irrespective of the service required or the Client's issue, that service required or the issue to be dealt with is the Provider's commercial opportunity. Immediately an instruction is given, most buyer leverage shifts to the provider. It would be regarded as quite unusual, particularly for cost reasons, to change legal or indeed any advisors post instruction.

Provider selection is the key tool in the Client's procurement toolbox and the removal of competitive tension is always to the Client /buyer' disadvantage.

LETTER OF ENGAGEMENT

The vast majority of these problems can be dealt with in advance by selecting the right Provider and constructing the engagement in a way that completely aligns the Provider's objectives with the Client's from the outset.

The objectives of the buyer and the seller of all services, but particularly professional services, must be completely aligned before the work starts. Any divergence or gap in understanding, deliverables, timelines, price, responsibilities or specific resources on offer should be dealt with before the assignment commences, or the Client will suffer the consequences later. The best method of aligning the objectives and understanding of the Client and the Provider is to lay out all pertinent matters in a letter of engagement (LOE). This should be agreed and signed before the assignment commences. All too often a LOE emerges after the assignment has commenced or not at all.

Client /Buyer leverage with regard to resolving any lack of alignment in these matters is severely compromised if the work has already commenced.

The Clients procurement team should facilitate signature of the LOE by the internal customer when agreed .As the LOE is a contract, legal oversight may be necessary. However, what is most important with regard to the LOE is that it accurately represents what is expected from both parties from the assignment/engagement.

HOW TO REDUCE THE RISK

A Provider should be selected and its services procured on the basis of a competitive and objective process. Expectations of both parties relating to particular assignments or engagements should be laid out in as much detail as possible in a LOE. The price should be both capped from the Client /Buyer perspective and deliverables dependent.

A Capped price means that the capped price is the maximum that can be paid (on the basis of pre specified assumptions) .The risk in relation to price should be with the Provider and any underutilisation of resources should benefit the Client /Buyer.

This is distinct from and better than a fixed price arrangement where a fixed price must be paid by the Client even if considerably less or fewer resources than anticipated are used.

Deliverables dependent means that a maximum of the capped price should only be due and paid if the pre specified objectives as laid out in the LOE or ‘deliverables’ are met. This is dealt with in more detail below.

Payment on a ‘time and materials’ basis for professional services should be strenuously avoided. The focus should always be on getting a specified piece of work executed as efficiently as possible. Paying by the time spent, even at seemingly attractive rates, reduces both Client and Provider efficiency.

Using normal procurement processes can of necessity take a little time. Lack of time is usually given as a reason not to use a tendering process. However the principles listed below can be applied even when as little time as a few days is available, by incorporating the following into an abbreviated competitive process

The fundamental principles that apply to all procurement decisions are:

1. Maximisation of competitive tension
2. Openness and fairness
3. Objectivity

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TENDERING

Where there is a significant spend, time available and some procurement support, TENDERING for professional services is regarded as the best way of obtaining the optimum result. Most readers will be familiar with standard tendering processes so these are not described in detail here. In general the processes are the same for tendering professional services and as in other tendering scenarios, the procurement role is to facilitate and/or to drive an efficient process to get the most suitable provider at the best possible price.

However there are some aspects of tendering for professional services that are slightly different from the standard process /norm and require a slightly different focus.

1 Deliverables

The first of these is the definition of deliverables between the parties .The description or definition of the deliverables and how those deliverables can be eventually measured both in the

tender document and in the LOE is absolutely fundamental to the success and the assessment of the success of any assignment. Poorly expressed requirements and the eventual divergence of view between Client /Buyer and Provider as to what was asked for in the first place is a huge problem in the procurement of professional fees, which cannot be over - emphasised.

Professional procurement should be able to assist greatly in this regard

Sometimes the nature of an assignment can make the early definition of deliverables difficult. For instance, a professional service is required to solve a particular problem but the client does not know what the solution might be. In such a case accurately specifying deliverables up front could be extremely difficult and measuring eventual progress and success even more so.

The best way forward might be to split the opportunity into two sequential tenders: - a planning phase and an execution phase. This would considerably simplify how deliverables might be specified in any second and frequently more expensive phase. Greater work would probably be required up front but more ideas and possible solutions will get on to the table before completely committing in one direction. It could ultimately emerge that the Provider for the planning phase is not the successful bidder to provide the services in the execution phase and that work is awarded to another bidder. Either way the methodology of measuring the deliverables and success for the second phase will be much clearer, more broadly based and suitable for incorporation into a LOE than trying to firm up on such matters using one tender.

2 The selection panel

The successful procurement of professional fees requires a greater amount of qualitative assessment by the selection panel. For this reason

Stakeholder/internal Client involvement and the involvement of a cross functional selection panel, at all major decision points, is even more necessary in the procurement of professional services than in other significant procurement scenarios. The panel should include a representative of all significant stakeholders such as say: Operations, Finance and Program Management as well as Procurement. This will help ensure the organisation gets what it needs and will greatly increase the organisational support as to which provider is selected and on what basis. Selection panel vote weightings should also be agreed in advance.

As part of its function the selection panel should articulate, in the tender document if possible but certainly in advance of any responses, how important the relative attributes of potential providers are. This should be done prior to provider selection and adhered to until conclusion of the tender process.

3 Assessment/evaluation criteria

For professional services qualitative factors in the evaluation criteria will significantly outweigh the quantitative. Evaluation criteria will probably be somewhat different for every assignment and can include:

- Demonstration of understanding of the requirements.
- The Service Provider’s approach.
- The execution plan.
- A proven firm track record for similar requirements.
- Access to and availability of appropriately skilled resources with relevant experience (CVs)

The principle used in deciding which evaluation criteria to use should be that the criteria used are both separately identifiable from tender responses and also assist the panel in differentiating between potential providers. Weightings of criteria should reflect relative attribute importance. Where an attribute is considered absolutely fundamental to the

Risk	How risk was reduced
Wrong Provider was chosen	Entire selection process should reduce this possibility
Provider did not perform	Deliverables based payment will minimise this possibility
Inappropriate resources were provided by the provider	Appropriately skilled resources criteria specified as part of the selection criteria (and specified in the LOE)
The provider could not perform because of Client factors outside its control (such as failure of Client’s relevant employees to provide information to Provider)	Mutual expectations should be set out in LOE and internal stakeholders’ expectations should be aligned via the selection panel.
An insufficient or inappropriate range of solutions was made available by the Service Provider to the Client and the wrong solution was chosen	Suitable competition was brought into selection process at the right time
There was a lack of measurable progress towards the objectives	Everyone knew what was expected from the outset and how it was to be measured
The cost was too high	Price capped and agreed in advance
The assignment took longer than anticipated	Timing of deliverables was itself a deliverable
The assignment was bad value for money	Price was capped and agreed in advance
There was a lack of internal stakeholder buy in to the provider objectives and efforts	Stakeholder involvement start to finish
Organisation was unable to support awarding process	Tendering process auditable

However there are some aspects of tendering for professional services that are slightly different from the standard process/norm

execution of the service needed – for example a proven firm track record for similar requirements, then a minimum necessary rating of potential providers in that evaluation criterion should be specified in advance in the tender to ensure that only realistic contenders can progress.

4 Financial criteria

The proposed Service Provider’s price proposition will always be part of the decision matrix and pricing should be requested and submitted in a way that eases comparison. In general the more commoditised the goods or services, the larger the amount of weighting of price. However, as indicated above, for professional services it is usual that non financial (qualitative) criteria get most weighting.

5 Face to face

Face to face contact after rating the written response is much more relevant and appropriate in the context of the procurement of professional fees, than it might be for other categories of



spend. An opportunity to meet the team proposed and to re-examine the scores awarded in the light of that meeting or presentation can lead the Client /Buyer to change selection or indeed eventual LOE contents. How a

firm performs in a presentation itself can be a selection criteria.

Finally it should be mentioned that it is critical in tenders for professional services, as for all tenders, that the

evaluation criteria and their relative weightings should not change after the tender is sent. Changing the rules after a tender is sent is unfair and changing the rules after responses have been received is even more so.

Conclusion

The outcome of the tender process and adhering to the correct procedures should be the selection of the best provider for the assignment. The risks specified earlier should have been reduced as shown in the panel on page 28 opposite.

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