Key questions to ask during the procurement and contract negotiations

Selection:
Careful consideration must be given to choosing the most suitable partner

- Have we selected the right partner?
- What evidence is there that demonstrates the supplier will be willing to work co-operatively with the department?
- Why is this supplier preferred for partnering rather than others?
- Is there provision for the change of ownership of the supplier?
- How will continued value for money be demonstrated in the absence of periodic re-tendering of the service?
- How will we demonstrate VFM for new requirements over the life of the contract?
- Have we access to the supplier's financial information and costs?
- What are the specific, quantified improvements and milestones set for partnering?
- What are both parties putting into the partnering arrangement?
- Can both parties provide sufficient continuity of support and resources for the duration of the arrangement?
- Have we established good communications channels? Are joint plans in place to help build the relationship?

Contract expiry:
Where the contract ends as planned

- Is there a mechanism in place for orderly change/withdrawal?
- Have conditions for change/withdrawal been determined and put in place?
- Does the exit strategy include:
  - The need to address the problem of interesting potential partners in a re-tendering exercise if they feel the department's previous partner will be at an advantage in the new competition?
  - How to ensure the current service is maintained during re-tendering and transition?
  - How we ensure the old partner will co-operate with the new partner in any handover exercise?

Unplanned termination of contract: Entering into the relationship both parties will recognise that the relationship could terminate for reasons other than contract expiry. These reasons could include:

- Boundaries of the relationship may change as result of machinery of government changes for example
- Supplier commitment to the success of the relationship weakens due to changes in key personnel, change of ownership, change of strategy or failure to realise anticipated returns. Client commitment weakens for similar reasons
- Crisis such as force majeure, bankruptcy or corporate scandal
- Medium and long-term customer requirements over the life of the partnering relationship were not clear at the point of formation

- Has an early warning system/indicator been identified for possible change/withdrawal?
- Is there a mechanism in place for early withdrawal?
- Are arrangements in place for an alternative strategy/supplier to be implemented in the event of change or withdrawal?
- Will we be able to walk away if the partnering does not deliver specific improvements by agreed milestones?
- Do we have plans to reduce the severe impact on customers who may lose some, or all services, for a period?
- How will we overcome potential loss of customer confidence?
- How will we reduce the impact of employee uncertainty and loss of morale?
- Are we prepared to cope with an aggrieved supplier?
- Are there the funds to cover the cost implications of change?
- Have we budgeted for penalty costs for early termination?
- Do we have a strategy to counter a potential for adverse media reaction?
- Are we prepared for the diversion of department management team away from core business?

Choose the right partner

Shared commitment

BEST PRACTICE

Forming partnering relationships with the private sector in an uncertain world

Alignment of culture & strategy

Continuing VFM

Mutual benefits

Contingency planning

OGC
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How partnering relationships can cope with uncertainty

What is partnering?
Partnering is where two, or more, organisations develop a close and, generally, long-term working relationship. The principle being that a co-operative relationship is better than an adversarial one. A partnering relationship works because both parties derive mutual benefits from the arrangement and so have an interest in each other's success. For legal reasons 'partnering relationship' has become widely preferred to 'partnership'. The words may be different but the philosophy is the same.

Partnering enables organisations to increase innovation, and to enhance customer service. It also helps to:
- Improve long-term planning by providing the stability of a long-term relationship
- Manage risks more effectively by transferring risks appropriately
- Reduce administration costs by passing them to the partner.

Planning for the long-term
The partner will be selected through open and fair competition in line with EC rules and as indicated in "OGC Best Practice: Managing Partnering Relationships":
- A risk/benefit analysis should be undertaken before entering into a partnering relationship but care should be taken to measure value not price alone
- Careful consideration should be given to choosing the most suitable partner and serious efforts then made to align both the department's and the partner's culture and strategies.
- A management structure that encourages, 'good governance' is essential. This will help to avoid misunderstandings and potential disagreements between the partners.

Most potential problems can be overcome if, from the start, the partners have clear objectives, good communication, a robust attitude to the relationship and a clear exit strategy.

Alignment of culture & strategy
The full co-operation of both parties is critical to the success of any partnering relationship. At the start of the partnering relationship, senior management must ensure that both partners have similar aspirations on approach to business, shared goals and strategic ambitions. This needs to be worked on throughout the length of the contract.

It is equally important that the high-level understanding is translated down to the practical level. The agreed detailed definition of the required service underpinning the high-level strategic objectives should be recorded in the contract to help avoid disagreements at the very beginning of the relationship.

There will be times when 'unforeseen events' will occur but these will be more easily managed if both parties have developed a good understanding of each other's strategic drivers.

Good governance
An effective partnering relationship should bring down costs and make the department more responsive to the needs of its customers. But it will mean rejecting the traditional 'master-servant' syndrome, where the supplier is merely told what to supply and the department the price. While partnering takes time, years not months, to develop fully, small steps help to deliver results quickly.

The partnering agreement should be kept under continuous review and, if necessary, renegotiated subject to any EC Directive limitations. Departments should be concerned to ensure that the services being supplied by the partner continue to be value for money. But they will also need to be aware of the supplier's wish to receive a reasonable volume of business and rate of return from the arrangement. At the end of the first year, consideration should be given to appointing an independent facilitator to undertake an analysis of the relationship. Deficiencies highlighted by the analysis should be addressed quickly and, if necessary, the contract amended to accommodate changes. It is essential that both parties be seen to be benefiting from the relationship.

Potential problems/risks
Many eventualities e.g. change of ownership and a change of government/government policy should be covered in the initial partnering agreement. This will include an exit strategy that enables the department and/or partner to withdraw under certain circumstances. A good partnering relationship agreement will specify potential break points and contain fixed end-points.

A key risk from a partnering relationship is that value for money in the long term could be compromised from being locked into a long-term relationship, particularly where new services are procured from the partner, which will not have been subject to a competitive procurement.

This risk needs careful management. An agreed pricing structure which will have been determined through competition before appointing the partner and/or the facility to benchmark the price of new services before accepting the price are ways of managing this risk. It may, however, be difficult or impossible to gather comparable data to benchmark complex new services, such as IT services. A further problem is that it may be difficult to get other suppliers interested if the arrangements are ever re-tendered, as other suppliers may perceive that the department's previous partner will be at an advantage in any new competition.

Contingency planning
To ensure that the department is able to take over direct management at a time of crisis, (partner insolvency, fire/flood, war, an act of terrorism etc.) a continuity plan should be prepared, which will cover:

- Stabilisation of Operations
- Re-tendering plans
- Hand-over plans
- Media Reaction

When the partner is a subsidiary of a larger company, the department should seek to negotiate a financial guarantee from the parent company to cover any expenses incurred, if the partner becomes insolvent.

Representatives of the parent company should attend performance review meetings on a regular basis. This will enable the department to obtain some insight into the partner's financial standing.

In the event of the partner becoming insolvent, the first move should be to try to retain the services of those staff engaged on the project. As an interim measure a third-party provider could be employed to provide the necessary management skills.

Should the partner wish to withdraw outside the terms of the agreement, both parties will work together to achieve a seamless transition and transfer of resources and to provide the department with sufficient time to re-tender the contract. The agreement should include clauses covering early termination including compensation clauses.

Should the department wish to withdraw from the agreement, it will be important to ensure that plans are in place to cope with possible adverse media reaction.

Let us know what you think

See the successful delivery toolkit for related sources of best practice, tools and techniques; www.ogc.gov.uk/sdtoolkit

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