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Discussion Group: Supplier Relationship and Contract Management

Gemma Payne, SUPC

Jennifer Smith, Achilles

Discussion Point 1: Contract Management vs Contract Administration

- **What are the key differences between contract management and contract administration?**
- **Develop a clear explanation that distinguishes the two areas and outlines the key activities involved in each phase.**
- **How important are these roles in Procurement cycle..**

Takeaways

- Contract management is proactive and preventative
- Contract administration is reactive relating to everyday actions
- They are 2 separate roles

Contract Management

Contract managers deal with:

- Variations
 - Disputes
 - Costs
 - Budgets
1. They have an overview of the contract and its issues derived from contract administration data
 2. Ensure there is no material changes
 3. Manage conflict and disputes
 4. Ensure MEAT (Most Economical Advantageous Tender) is delivered by referring to the specifications, terms and conditions, KPIs
 5. Encourage development of the relationship with the supplier (Performance management & Relationship management)

Contract Administration

Contract administration has to be done at the coal face. It is the collection of day to day data which is then used as information to manage the contract.

1. Admin – audit trails (contract log)
2. Document compliance with the contract

3. Establish reporting procedures both formal and informal. Meeting minutes, weekly / monthly / quarterly meetings
4. Record non-conformances

Discussion Point 2: Procurement Act vs Contract Management

- **How will the Procurement Act 2023 impact the performance of suppliers in contract management**
- **Given these new rules, what challenges and risks do you anticipate in managing contracts under the new Act? How might you need to adapt your contract management processes, resources and governance?**
- **What steps would you take to comply with the KPI and debarment list requirements while still maintaining positive supplier relationships?**

Takeaways

- One of the key new requirements is that for any contract over £5 million, your agency must set and publish Key Performance Indicators (KPIs) to measure the supplier's performance. You must then regularly assess the supplier against these KPIs and publicly report on their performance.
- Contracting authorities must set and publish 3 or more KPIs to measure the supplier's performance.
- Supplier performance against these KPIs must be publicly reported at least annually and upon contract termination.
- This public reporting and transparency will hold suppliers more accountable for delivering on their contractual commitments
- Another major change is the introduction of a centralised "debarment list" of suppliers who have been barred from bidding on public contracts due to misconduct or poor performance. Suppliers can be added to this list after an investigation by a government minister.
- A lot of how this will be applied is still unknown and is an area for us to watch going forward over the coming months and first few years of the new act

Discussion Point 3: Dispute Resolution

- **Why is dispute resolution a key part of contract management?**
- **Where in the contract should find you the process for dispute resolution to ensure that both parties are clear?**
- **How important is communication to maintain relationships?**
- **Before going to court there are different methods available to deal with disputes. What are the key elements of "Arbitration" and "Mediation"?**
- **What must you consider before "Litigation" and "Termination"?**

Takeaways

Dispute resolution should be clearly provided for in the Terms and Conditions.

You need good communication to maintain relationships.

Different methods to deal with disputes before you go to court:

1. Arbitration "not criminal matters"
 - A neutral 3rd party to hear the dispute

- Informal hearing
- Arbitrator is chosen by both parties
- Decision is final and binding on both parties
- Quicker and more cost effective than going to court

2. Mediation

- Faster than arbitration
- More control over the final result
- Mutually selected mediator
- Some mediation services are FOC

Litigation

- Go to court
- Expensive
- Time consuming
- Open to public i.e. reputation risk, bad PR

Termination

- Do not terminate before taking legal / procurement advice
- **You** may breach the Ts&Cs therefore you may be liable for damages
- Think about continuity of supply
- You must have a plan B
- Do a risk assessment / look at Ts&Cs