

Regional Contestability Workshop
20th December 2004

Contestability – Sharing Our Knowledge

Ad Esse was asked to facilitate a Workshop for a group of senior managers from Probation and Prisons in the Yorkshire and Humberside Region just before Christmas 2004. This was an opportunity for those managers to share their collective knowledge of contestability and to begin to consider what it would mean for them.

These notes are intended as a summary of the discussions during that day in the hope that they may be of wider interest.

Syndicate 1 Feedback:

What is contestability?

- No real, clear definition exists
- It has been stated that it is not privatisation, or Competitive Compulsory Tendering, or Best Value
- The challenge of contestability is to ensure the best outcomes are delivered, for the best price

In economics, a contestable market has no entry barriers - firms can enter or leave an industry costlessly. Contestability theory is associated with Baumol who argues the mere threat of new firms entering a market means existing firms act competitively i.e. lowest costs, prices and profits. The theory of contestable markets argues that what is important is not actual, but potential competition.

The government has sought to create contestable markets in the rail, bus, ferry and air industries through deregulation (buses) and short franchises (trains).

In the criminal justice sector, the idea of a contestable market is a spur for continuous performance improvement and encouragement to look for innovative ways to deliver services to clients. This might be through the use of private contractors, partnerships between agencies, or making increased use of acknowledged existing excellent service providers.

Issues/Concerns:

Some of the practical issues raised during the workshop included:

- Relationship with the ROM – how will we influence
- Balancing local needs with national targets
- We can either be proactive, or have it “done to us” (contestability is an opportunity)
- Understanding the market and how it might be segmented
- Will it be a level playing field (private vs. public sector expected performance) and questions about accountability and public scrutiny of private sector providers
- The level of resources and investment required to do it properly (includes the need for an effective infrastructure for bidding)
- Communications and buy-in from staff (including relationship with TUs)
- Risks of experienced staff leaving (or being poached by the private sector)
- Implications of the Freedom of Information Act (what info will we have to give to the private sector?)
- Competition vs. Collaboration vs. Partnership – what will the relationships be?

The last point represented an area for some strategic decision-making within the Region. Services could be delivered in any of these three ways and the strategies could differ for each service (e.g. Drugs, Hostels, Basic Skills etc.).

Learning from Prisons:

Contestability was not applied to the Prison Service, however, market testing has been and there are some useful lessons to draw on.

Of 138 prisons, 10 are in the Private Sector with contracts for up to 25 years. The major players include SERCO, GROUP 4 FALCK, SECURICOR, SODEXHO ALLIANCE. Some contracts are for design, construct, manage and funding (DCMF); some are simply manage and running.

The Private Sector have very slick bidding processes and running a Bid team can be expensive – 12 people over 9 months for one in-house Prisons team. There is evidence of loss leader strategies from the Private Sector to gain a foothold in market – they buy their way in and then negotiate additional fees for extra services or changes to existing services. It seems likely that a similar strategy would be adopted by businesses wishing to get access to a wider Criminal Justice “marketplace”.

With market testing of Prisons, clear proof of performance is required vs. KPIs (e.g. safety, security, people satisfaction, offender treatment). Similar clarity of KPIs will be needed for other contestable services.

A clear process exists for market testing, however we still need to define how contestability differs – is it a pre-market stage of developing the market and defining requirements of products and services?

Private Sector Strengths and Advantages:

- Freedom to manage and flex their budgets
- Ability to define Terms & Conditions and work content of their people
- They have a vested interest in expanding
- Real expertise in the Bid Process
- Adopting a loss leader approach
- Very flexible
- Slick presentation of bids
- Focus on using technology to reduce cost in the long-term

But, they still don't have the expertise & therefore head-hunt from public sector.

Contract Management:

- They have to provide what is specified
- Financial penalties for failures (e.g. escapes)
- Any amendments have to be negotiated and paid for

Finally, it was felt that the implementation of a Performance Improvement Process (e.g. Business Excellence, Continuous Improvement) helps create an environment where staff expectations are influenced positively towards the new environment (e.g. the need for change, different ways of doing things, benchmarking, measurement).

Recurring SWOT Themes

The workshop participants carried out SWOT Analyses on their current positions in relation to likely contestability challenges. Some of the recurring themes that emerged were:

Strengths and Opportunities...

- Local delivery and local connections are a strength
- Commitment to Diversity is a strength

Weaknesses and Threats...

- Terms & Conditions (TUPE issues)
- Lack of innovation and financial appreciation in the current culture(s)
- The political agenda and its impact (irrespective of "the facts")
- Questions over Board reactions to, and understanding of, NOMS and contestability
- There is no NOMS involvement in CJBs

Suggested Actions Arising

The final activity at the workshop was to summarise a set of possible actions to move things forward on the contestability agenda:

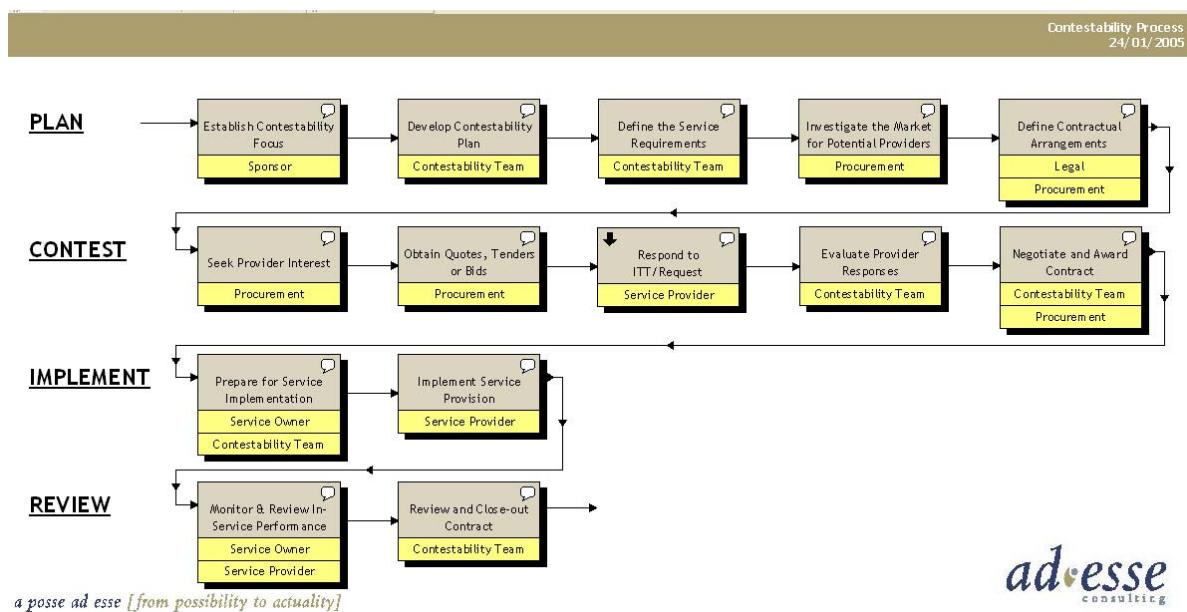
- Set up a Regional Panel with expertise in contestability and commissioning
- Develop a Regional Commissioning approach (virtual team and/or protocols)
- Carry out a Unit Costing exercise to establish the competitive baseline for current services
- Establish strategic choices of Compete/Collaborate/Partner for each product/service area
- Define the relationship with Boards and how to manage the transition period
- Develop the new skills required for contracting, PR and bid management
- Audit / map existing Partnership Contracts in the Region to see if there is duplication and opportunities for economies of scale
- Decide...
 - o What needs to be done jointly in the Region?
 - o What needs to be done by Prisons or Probation alone/separately?
 - o What needs to be done in local Areas?

Critical Success Factors and Learning Points

- Define outcomes and their associated targets for each scoped or bounded service (boundary definitions are critical)
- CSFs include the need for clear definitions of the service and establishing clear service standards for others to deliver against
- There are a number of legacy issues which need to be managed (e.g. facilities and IT)
- Risk Management
- Understanding of costs
- Compliance mechanisms
- How to demonstrate the Value Add of what we do now
- The cost of the bidding process vs. the value of what is being contested (is the expense justified?)
 - may need to triage bid types
- Look further ahead than just the current year – opportunities for expansion, but recognise the difficulties caused by annual funding and non-profit objectives

A Process for Contestability

Since the workshop, we have developed an outline process for carrying out a Contestability exercise (see below). It has four main stages: Plan, Contest, Implement and Review.



The process covers what we have called the “Contestability Lifecycle”, taking a service where a contestability exercise is required, right through to implementation, performance management and review. Clearly defined roles and responsibilities have been identified for each of the stages and the process can be applied to individual services or whole “business units”.

We have also developed a Bid Management process to give an overall approach to in-house teams of service providers who may need to respond to the contestability challenge by preparing bids.

The Ad Esse View of Contestability Success Factors

Success will be dictated by:

- Understanding (and balancing) complex customer and stakeholder requirements
- Understanding and balancing a National and Local agenda
- Clarity of your strategy (Business and Contestability)
- Ownership and buy-in to your strategy (By staff and partners / stakeholders)
- Clear and measurable aims and objectives
- Clear processes (world class bid management process / PR process / political interface)
- Understanding distinct products and services and costs
- Maintaining / improving current performance in the areas which align to your strategy
- “Managing” the rest
- Recruiting and retaining “good” people (and managing the risks of headhunting)
- Ensuring you have a plan for support and enabling processes (IT, HR, Estates)
- Excellent project and change management skills with sound risk management
- Maintaining or developing an “outcome” not “activity” focus
- Maximising those issues which differentiate you from the market / competitors (e.g. focus on Diversity)

For more information, contact Lorraine Mackin (lorraine.mackin@ad-esse.com) or Ian Seath (ian.seath@ad-esse.com).