



Profiting from partnerships – contracting and commissioning

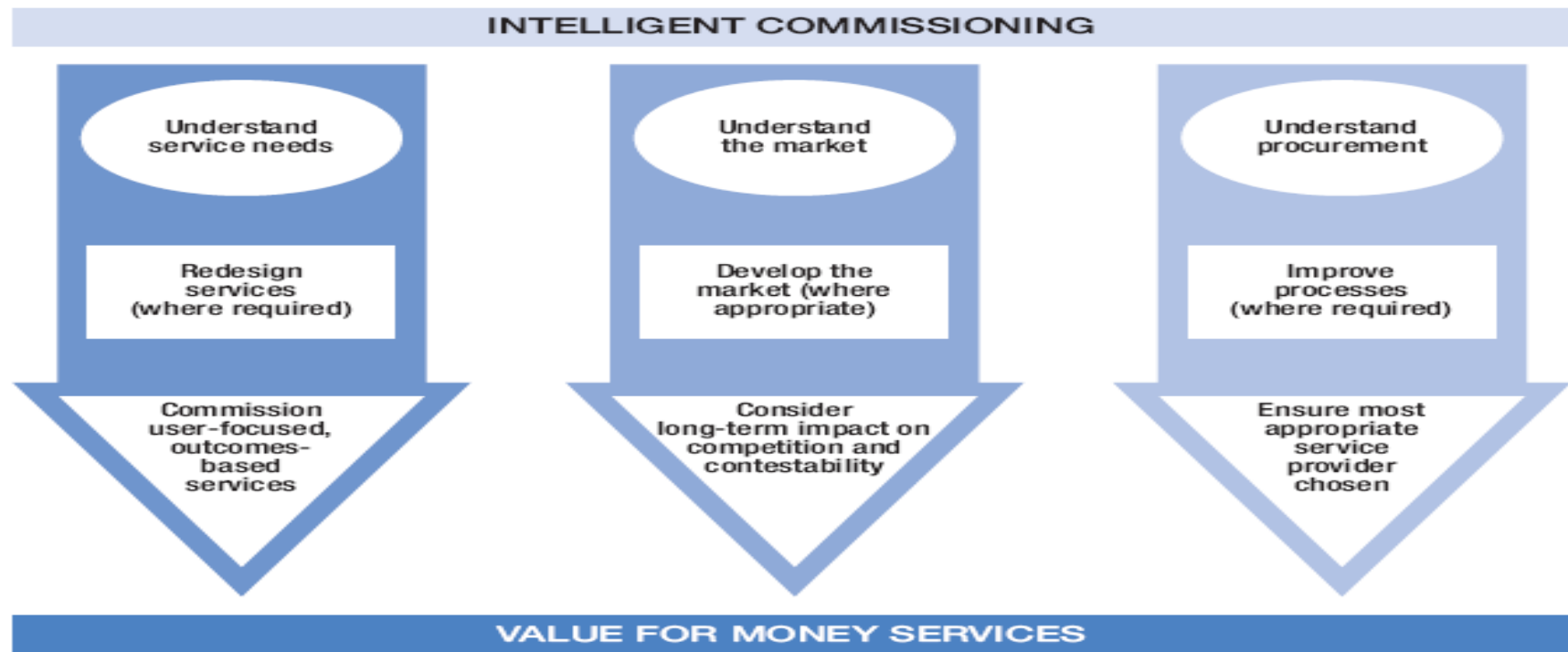
Mark Cook

Anthony Collins Solicitors LLP

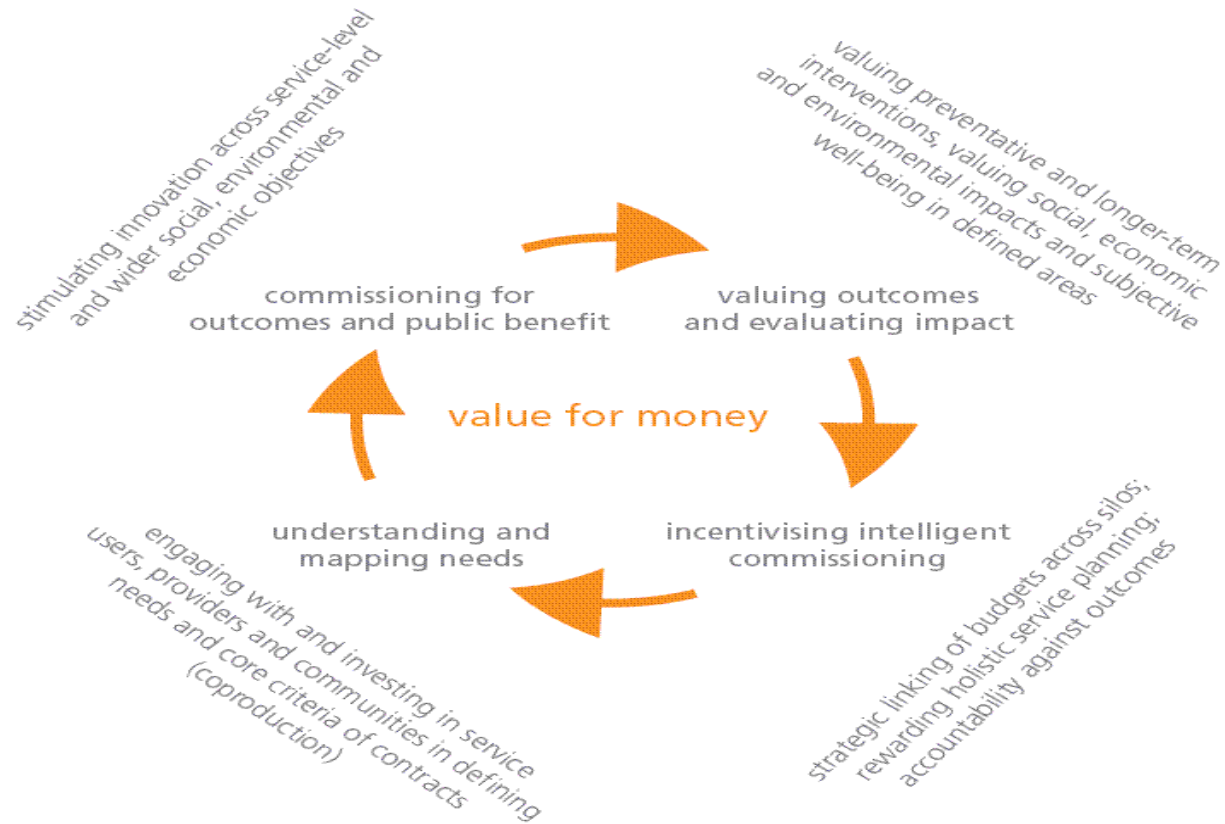
mark.cook@anthonycollins.com

Hearts & Minds: Audit Commission

Intelligent commissioning



A better return- National Programme for Third Sector Commissioning/ nef



Some definitions

- Social clauses
- Community benefits
- Social issues
- Sustainable procurement

Social clauses

“relevant, legitimate and value for money aspects of a procurement lifecycle which fulfil a particular social aim. (This may include social requirements within the technical specification and award criteria of a contract, where they are relevant to the subject of the contract and compliant with public procurement legislation, as well as the UK’s value for money policy (or equivalent commitment)).” - Office for the Third Sector

Community benefits

- targeted recruitment and training (TR&T)
- ALSO equal opportunities, access to services in deprived areas, training for the existing workforce, supply chain initiatives, community consultation, 'considerate contractor' schemes, contributions to education, the promotion of social enterprises, and resources for community initiatives.

Social issues

core labour standards, disabled access, disability, gender and race equality, employment and training issues, fair trade, and support for SMES including social enterprises, black and ethnic minority enterprises and women and disabled-owned businesses.

Sustainable procurement

The Sustainable Procurement Task Force's definition of sustainable procurement is:

'a process whereby organisations meet their needs for goods, services, works and utilities in a way that achieves value for money on a whole life basis in terms of generating benefits to society and the economy, whilst minimising damage to the environment.'

Or...

Maximising the difference made to
people's lives

Value for Money

“the optimum combination of whole-of-life costs and quality (or fitness for purpose) of the good or service to meet the user’s requirement. Value for money is not the choice of goods and services based on the lowest cost bid.”

Best Value

“arrangements to secure continuous improvement in the way in which its functions are exercised, having regard to a combination of economy, efficiency and effectiveness.”

The EU Procurement Framework

- Altogether now: consolidated directive
- The direction of case law:
 - don't specify "local"
 - policy basis enables purchasing requirement
 - make sure you can verify what you are saying
 - don't treat public services workers differently from other private sector workers
- Interpretative communications and other guidance
- Tensions between free market and social policy agenda

Recital 46 Consolidated Directive

In order to guarantee equal treatment, the criteria for the award of the contract should enable tenders to be compared and assessed objectively. If these conditions are fulfilled, economic and qualitative criteria for the award of the contract, such as meeting environmental requirements, may enable the contracting authority to meet the needs of the public concerned, as expressed in the specifications of the contract. Under the same conditions a contracting authority may use criteria aiming to meet social requirements, in response in particular to the needs – defined in the specifications on the contract – of particularly disadvantaged groups of people to which those receiving/using the works, supplies or services which are the object of the contract belong.

Public Contracts Regulations 2006

Regulation 39

- (1) A contracting authority may stipulate conditions relating to the performance of a public contract, provided that those conditions are compatible with Community law and are indicated in:
 - (a) the contract notice and the contract documents; or
 - (b) the contract documents
- (2) The conditions referred to in paragraph (1) may, in particular, include social and environmental considerations

Practical steps for commissioners

- Check powers
- Identify policy basis for action (short term)
- Adopt an explicit policy (longer term)
- Include in Business Case
- Include in the core requirements – ensure non-discriminatory
- Include reference in Contract Notices
- Include PQQ and spec.
- Use in the award process
- Deliver through a ‘partnering approach’

Good practice for contractors

- get involved with the public bodies they would like to be working with at the earliest possible opportunity.
- help the body to decide what it wants to commission, and demonstrating what the market can provide;
- attend events hosted by the public body, specifically with the intention of getting to know the marketplace or helping Third Sector organisations and other interested parties get to know each other;
- consider bidding for public contracts as part of a group or consortium;
- remember that the EU procurement rules will not always apply;
- take advantage of information and advertising that is aimed at them by the public sector

Practical examples

- Thin on the ground
- Now's a good time to engage
- Try some pilots
- Plenty of practical guidance